

TOWN OF LONG BEACH
ADVISORY BOARD OF ZONING APPEALS

Long Beach Gymnasium
Zoom Video Conference Call

Meeting Minutes for July 14th, 2020

1. Call to Order

The Regular Meeting of the Town of Long Beach Advisory Board of Zoning Appeals was held in the Long Beach Gymnasium and by Zoom Conference Call on Tuesday, July 14, 2020. Chairman Mike Gorman called the meeting to order at 7:00 p.m.

2. Roll Call

Board members in attendance: Chairman Mike Gorman, Meg Kanyer, Barb Morgan, Rich Jercich, and Doug Wickstrom

Board members attending via Zoom Conference Call: None

Members absent: None

A quorum is present and the meeting shall proceed

Attorneys in attendance: Christopher Willoughby of Braje, Nelson & Janes, LLP

Also in attendance: Secretary Meg Collins

Building Commission representative: Bob Lemay

Also in attendance via Zoom Conference Call: Court Reporter Rebecca Lempa and Videographer Marilyn Jones, hired by a private individual

3. Pledge of Allegiance

4. Approval of Minutes: Upon motion by Meg Kanyer, seconded by Doug Wickstrom, the regular meeting minutes from June 16, 2020 were unanimously approved.

5. Old Business - None

6. New Business - None

7. Preliminary Hearings

a. Thomas King – 2301 Florimond Drive

Four separate Administrative Decision Appeal Petitions appealing the decision of the Building Commission's January 15, 2020 issuance of a Building Permit for the construction of a seawall, at the following properties:

- 1) Barrett and Susan Callaghan – 2234 Lake Shore Drive
 - 2) David and Michelle Benoit – 2230 Lake Shore Drive
 - 3) Scott Upp – 2116 Lake Shore Drive
 - 4) Michael Magee – 2120 Lake Shore Drive
- The preliminary hearing opened at the June 16, 2020 BZA meeting. The Petitions were directed to the Town Council.

Chris Willoughby states the Town Council has referred these Appeal Petitions to a Special BZA. Council is David Austgen. Notice will be given to the public concerning these Petitions.

8. Public Hearings

a. Kevin and Jocelyn Kruis – 2027 Oriole Trail

Developmental Standards Variance Petition requesting variances from the requirements of:

1. Section 154.057 – Schedule of District Regulations, concerning setbacks, and
2. Section 154.134 – Nonconforming Residential Dwelling Alteration Permitted.

Petitioner is requesting to construct three-season room and replacement deck.

- Preliminary hearing opened October 8, 2019 and was continued to November 12, 2019 BZA meeting, which meeting was cancelled. Preliminary hearing resumed at the December 10, 2019 BZA meeting and was continued to the January 14, 2020 regularly scheduled BZA meeting. At Petitioner's request the preliminary hearing has been continued to the February 4, 2020 BZA meeting. At Petitioner's request the public hearing which was set to open at the June 16, 2020 BZA meeting was postponed. The public hearing is set to open at the July 14, 2020 BZA meeting.

The Board and Kevin Kruis discuss the green return receipt cards that are required to be submitted to the Clerk's Office prior to holding a public hearing. The cards were delivered to the Long Beach gymnasium the evening of the meeting. The public hearing was moved to the last item of the agenda.

All requirements to hold a public hearing have been met.

Mike Gorman declares the public hearing open.

Kevin Kruis explains the four seasons room and deck extension that are being requested. Kevin states the additional items that were submitted to the Clerk's Office.

Mike Gorman states for the record that the setback variance was withdrawn.

Mike Gorman calls for any persons who wish to speak in support of the petition.

No individuals speak in support and no letters of support were received.

Mike Gorman calls for any persons who wish to speak in opposition of the petition.

No individuals speak in opposition and no letters in opposition were received.

Mike Gorman declares the public comment portion of the meeting closed.

Building Commission representative Bob Lemay mentions lot coverage. Mike Gorman responds that lot coverage is not relevant to the BZA but may be relevant to the Building Commission. Kevin Kruis states the property is at 18.9% lot coverage with the new Thate survey that was completed.

Only variance the Petitioner is asking for is due to nonconforming structure because the existing garage is in the setback. Mike Gorman states the Petitioner needs a volume variance and footprint variance.

Meg Kanyer reads aloud Findings and Decisions in favor of this Petition. Meg Kanyer motions, seconded by Rich Jercich, to grant the Petition based on the Findings and Decisions.

Doug Wickstrom comments that he does not see how these things can be accomplished with the drawings that are prepared and that the Petitioner could have other issues when seeking a permit with the Building Commission.

The variance is conditioned upon getting a building permit.

Vote is taken as a roll call. Meg Kanyer, Rich Jercich, Barb Morgan, Doug Wickstrom, and Mike Gorman are in favor of the motion. Five in favor, none opposed. The motion carries. The variance is granted.

b. Patrick and Rebecca McCusker – 2208 Chastleton Drive

Development Standard Variance Petition requesting two variances from the requirements of:

- 1) Section 154.051(B) – Permitted Accessory Uses and Structures, and
- 2) Section 154.30 – Nonconforming Buildings and Structures.

Petitioner is requesting to construct a shed as an accessory structure.

-Preliminary hearing opened at the June 16, 2020 BZA meeting. Public hearing is set to open at the regularly scheduled July 14, 2020 BZA meeting.

All requirements to hold a public hearing have been met.
Mike Gorman declares the public hearing open.

Attorney Rich Trainor summarizes the Petition. Rich states total lot coverage, the size of the shed, the need for the shed, and that there are no objections from neighbors. The shed allows the Petitioner to use the property.

Mike Gorman calls for any persons who wish to speak in support of the petition.
Meg Collins reads the following letters and e-mails aloud:
Donald and Ann Marie Deegan of 2212 Chastleton Drive
Annabella Juhasz and Cleo Brodsky of 2208 Florimond Drive
Mary Wilson and Ann Perry of 2209 Chastleton Drive
June Ruby of 2206 Chastleton Drive
Timothy Hanley of 2211 Chastleton Drive

Mike Gorman calls for any persons who wish to speak in opposition of the petition. No individuals speak in opposition and no letters in opposition were received.

Mike Gorman declares the public comment portion of the meeting closed.

Building Commission representative Bob Lemay comments on 154.052 concerning accessory structures being at least 30 feet from the right of way. Bob mentions the Petitioner ought to be asking for variance from 154.015. The Petitioner could get a variance from the BZA but be turned down by the Building Commission when applying for a permit.

Mike Gorman confirms for Barb Morgan the size of the shed and the shed being built on a nonconforming property. There is no variance for setback before the Board.

Rich Jercich states the Petitioner is requesting 168 square feet, significantly above the 120 square feet allotted by the Ordinance.

Barb Morgan has the same concerns as Rich Jercich. The Ordinance says 1%.

Mike Gorman states the Ordinance says 1% and the requested shed is 46% larger than 1%. Mike states the lot is small for the area.

Doug Wickstrom comments that there was no mention of exploring other options for gaining additional storage, such as a home addition. Doug mentions the neighbors in support of the project.

Rich Jercich motions, seconded by Meg Kanyer, to deny the variance request for Section 154.051(B) and approve the variance request for Section 154.130. Rich reads the Findings and Decisions aloud.

Vote is taken as a roll call. Meg Kanyer, Rich Jercich, Barb Morgan, Doug Wickstrom, and Mike Gorman are in favor of the motion. Five in favor, none opposed. The motion carries.

c. Scott and Brandi Upp – 2116 Lake Shore Drive

Development Standard Variance Petition requesting two variances from the requirements of:

- 1) Section 154.203(3) – Permissible Shoreline Preservation Structures and Specifications concerning the installation of a side seawall, and
 - 2) Section 154.057 – Schedule of District Regulations, concerning side setback
- Petitioner is requesting to install a side seawall that extends into the side setback by more than three feet.

- Preliminary hearing opened at the June 16, 2020 BZA meeting. Public hearing is set to open at the regularly scheduled July 14, 2020 BZA meeting.

All requirements to hold a public hearing have been met.
Mike Gorman declares the public hearing open.

Attorney Rich Trainor explains the seawall, the Building Commission timeline, when construction began. Certificate of Imminet Peril was mentioned. The return seawall is explained and how it did not tie into anything. The WPA wall that runs east and west across both the Magee and Upp parcels underneath their houses and the 3 feet seawall extension is explained. Rich explains the importance of the last 6 feet of the seawall.

Chris Willoughby states both variances being requested have been advertised. The variance for 154.057 was not withdrawn and Chris has no issue with the Petitioner pursuing both variances.

Mike Gorman calls for any persons who wish to speak in support of the petition. No individuals speak in support and no letters in support were received.

Mike Gorman calls for any persons who wish to speak in opposition of the petition. Meg Collins reads the following letters and e-mails aloud:
Cheryl Kaberna (Power of Attorney for John and Catherine Kaberna) of 2200 Chastleton Drive
Carla Fargo of 2201 Chastleton Drive

The following individual speaks in opposition:
Patricia Sharkey on behalf of Thomas King of 2301 Florimond Drive
Patricia addresses both the Upp and Magee properties at this time. Written comments were also submitted to the BZA prior to the meeting.

Mike Gorman declares the public comment portion of the meeting closed.

Rich Trainor briefly responds to the comments.
Building Commission representative Bob Lemay has no comments.
Board discussion is now open.

Documents from the DNR and Army Corps of Engineers was submitted past the two week deadline on July 7, 2020 to BZA Secretary Meg Collins. Meg Kanyer did not have a chance to review these items and will take this into consideration. Meg asks about the Ordinary High Water Mark. Rich Jercich also mentions the OHWM. OHWM is pointed on the Thate survey that was submitted.

Rich Jercich recuses himself from the Magee and Upp Petitions due to current legal proceedings currently taking place that cause conflict for his participation.

The remaining four members of the Board discuss the seawall extension variance being sought. The extension of the existing seawall back to the wpa wall is before the Board, not the issuance of the building permit.

Chris Willoughby explains the legal question before the Board.

Mike Gorman gives an overview of OHWM and prior rulings concerning the Gunderson Supreme Court decision. There could be a decision made by the BZA, Special BZA, Town, IDNR, that the BZA variance needs to be conditioned upon.

Chris Willoughby adds a point of clarity that the BZA decision needs to be taken into account as part of the larger record.

Mike Gorman motions, seconded by Doug Wickstrom, to approve two variances based on Findings and Decisions that apply to 2116 LSD. Both properties have been discussed. Each property has a separate public hearing.

Vote is taken as a roll call. Rich Jercich is recused; Barb Morgan, Doug Wickstrom, and Mike Gorman are in favor of the motion. Meg Kanyer opposes the motion. Three in favor, one opposed, one recusal. The motion carries.

Bob Lemay briefly discusses how the permits were issued subject to the homeowners getting these variances.

d. Michael Magee– 2120 Lake Shore Drive

Development Standard Variance Petition requesting two variances from the requirements of:

- 1) Section 154.203(3) – Permissible Shoreline Preservation Structures and Specifications concerning the installation of a side seawall, and
 - 2) Section 154.057 – Schedule of District Regulations, concerning side setback
- Petitioner is requesting to install a side seawall that extends into the side setback by more than three feet.
- Preliminary hearing opened at the June 16, 2020 BZA meeting. Public hearing is set to open at the regularly scheduled July 14, 2020 BZA meeting.

All requirements to hold a public hearing have been met.
Mike Gorman declares the public hearing open.

Mike Gorman states the Magee and Upp Petitions are separate but the comments made in the Upp public hearing were equally applicable to both properties. For the record Mike Gorman will incorporate into the Magee public hearing the discussions from the Upp public hearing as they relate.

Rich Trainor explains the seawall extension is on the east side of the properties in question and has a length of 7 feet. The same reasons would stand for the Magee property.

Mike Gorman calls for any persons who wish to speak in support of the petition. No individuals speak in support.

Meg Collins reads a letter submitted by Kendra Bartlett of 2102 Oakenwald Drive

Mike Gorman calls for any persons who wish to speak in opposition of the petition.
Meg Collins reads the following letters and e-mails aloud:

Cheryl Kaberna (Power of Attorney for John and Catherine Kaberna) of 2200
Chastleton Drive

Carla Fargo of 2201 Chastleton Drive

The following individual speaks in opposition:

Patricia Sharkey on behalf of Thomas King of 2301 Florimond Drive

Patricia's comments apply to both the Upp and Magee properties. Written
comments were also submitted to the BZA prior to the meeting.

Mike Gorman declares the public comment portion of the meeting closed.

Rich Trainor briefly responds to the comments.

Building Commission representative Bob Lemay has no comments.

Board discussion is now open, with the understanding that the comments and
discussions the Board had for the Upp property apply equally to this property.

Mike Gorman and Bob Lemay discuss if Edgewater Resource is considered a
delineation expert under the Shoreline Protection Ordinance.

Mike Gorman motions, seconded by Doug Wickstrom, to approve two variances
based on Findings and Decisions that apply to 2120 LSD. Mike reads Findings and
Decisions aloud.

Vote is taken as a roll call. Rich Jercich is recused; Barb Morgan, Doug Wickstrom,
and Mike Gorman are in favor of the motion. Meg Kanyer opposes the motion.
Three in favor, one opposed, one recusal. The motion carries.

9. Adjournment: Motion to adjourn by Meg Kanyer, seconded by Rich Jercich. The
meeting unanimously adjourned at 9:54 p.m.

Agenda Attached.

Findings and Decision Attached:

- Kevin and Jocelyn Kruis, 2027 Oriole Trail
- Patrick and Rebecca McCusker, 2208 Chastleton Drive
- Scott and Brandi Upp, 2116 Lake Shore Drive
- Michael Magee, 2120 Lake Shore Drive

Minutes Approved by:

BZA Secretary Meg Collins



**TOWN OF LONG BEACH
ADVISORY BOARD OF ZONING APPEALS
Regular Meeting**

Tuesday, July 14, 2020

7:00 p.m.

**Long Beach Community Center Gymnasium
Zoom Video Conference Information On Town Webpage
AGENDA**

- 1. Call to Order**
- 2. Roll Call**
- 3. Pledge of Allegiance**
- 4. Approval of Minutes**
 - a. June 16, 2020; Regular Meeting**
- 5. Old Business - None**
- 6. New Business - None**
- 7. Preliminary Hearings**
 - a. Thomas King – 2301 Florimond Drive**

Four separate Administrative Decision Appeal Petitions appealing the decision of the Building Commission's January 15, 2020 issuance of a Building Permit for the construction of a seawall, at the following properties:

 1. Barrett and Susan Callaghan – 2234 Lake Shore Drive
 2. David and Michelle Benoit – 2230 Lake Shore Drive
 3. Scott Upp – 2116 Lake Shore Drive
 4. Michael Magee – 2120 Lake Shore Drive

- The preliminary hearing opened at the June 16, 2020 BZA meeting. The Petitions were directed to the Town Council.
- 8. Public Hearings**
 - a. Kevin and Jocelyn Kruis – 2027 Oriole Trail**

Development Standard Variance Petition requesting variances from the requirements of:

 1. Section 154.057 – Schedule of District Regulations, concerning setbacks, and
 2. Section 154.134 – Nonconforming Residential Dwelling Alteration Permitted.

Petitioner is requesting to construct an addition and replacement deck.

-Preliminary hearing opened October 8, 2019 and was continued to November 12, 2019 BZA meeting, which meeting was cancelled. Preliminary hearing resumed at the December 10, 2019 BZA meeting and was continued to the January 14, 2020 regularly scheduled BZA meeting. At Petitioner's request the preliminary hearing was continued to the February 4, 2020 BZA meeting. At Petitioner's request the public hearing which was set to open at the June 16, 2020 BZA meeting was postponed. The public hearing is set to open at the July 14, 2020 BZA meeting.

b. Patrick and Rebecca McCusker – 2208 Chastleton Drive

Development Standard Variance Petition requesting two variances from the requirements of:

1. Section 154.051(B) – Permitted Accessory Uses and Structures, and
2. Section 154.130 – Nonconforming Buildings and Structures.

Petitioner is requesting to construct a shed as an accessory structure.

-Preliminary hearing opened at the June 16, 2020 BZA meeting. Public hearing is set to open at the regularly scheduled July 14, 2020 BZA meeting.

c. Scott and Brandi Upp – 2116 Lake Shore Drive

Development Standard Variance Petition requesting two variances from the requirements of:

1. Section 154.203(3) – Permissible Shoreline Preservation Structures and Specifications concerning the installation of a side seawall, and
 2. Section 154.057 – Schedule of District Regulations, concerning side setback
- Petitioner is requesting to install a side seawall that extends into the side setback by more than three feet.

- Preliminary hearing opened at the June 16, 2020 BZA meeting. Public hearing is set to open at the regularly scheduled July 14, 2020 BZA meeting.

d. Michael Magee – 2120 Lake Shore Drive

Development Standard Variance Petition requesting two variances from the requirements of:

1. Section 154.203(3) – Permissible Shoreline Preservation Structures and Specifications concerning the installation of a side seawall, and
 2. Section 154.057 – Schedule of District Regulations, concerning side setback
- Petitioner is requesting to install a side seawall that extends into the side setback by more than three feet.

- Preliminary hearing opened at the June 16, 2020 BZA meeting. Public hearing is set to open at the regularly scheduled July 14, 2020 BZA meeting.

9. Adjournment

**Long Beach Advisory Board of Zoning Appeals
Findings and Decisions
Development Standard Variance**

Petition No.: _____

Petitioner(s)/Owner(s): Kevin and Jocelyn Kruis.

Common Address: 2027 Oriole Trail.

Legal Description: *See attached Exhibit "A", which is incorporated into and made a part of these Findings and Decisions by virtue of this reference.*

Request: Petitioners request Development Standard Variance for the purpose of constructing a 20' x 20' addition to their deck on the southwest side of the residence and a 12' x 20' four seasons room on the east side of the residence. The contemplated project involves the alteration and improvement of a nonconforming residential building or other accessory nonconforming structure resulting in increases in the footprint by 640 sq. ft. and volume by 240 sq. ft., all of which is generally impermissible under the Section 154.134 of the Town's Zoning Code.

Date Public Hearing Held: July 14, 2020.

The Long Beach Advisory Board of Zoning Appeals ("BZA"), after giving due consideration to the Petitioner's Petition for Standard Development Variance, supporting documents, testimony, and evidence presented during the public hearing on the subject Petition, other materials presented to the BZA that are part of the public record, and the legal requirements set forth under the Indiana and Long Beach Codes, the BZA now makes the following findings,

1. The approval of the requested Development Standard Variance from the Town's general restriction against permitting the alteration of the Petitioner's nonconforming residential building or other accessory nonconforming structure that improves livability or usability but also increases the size of the first floor area and/or volume of the building will not be injurious to the public health, safety, morals and general welfare because the contemplated project will be constructed in a manner similar to other projects and improvements that exist or that have otherwise been allowed in and around the immediate vicinity of the subject property, and all construction will be in compliance with applicable provisions of the Town's Building Code.

2. The use and value of the area adjacent to the property subject to the requested Development Standard Variance will not be affected in a substantially adverse manner because the project involves updating and improving the property while maintaining its general compatibility with the character of the immediate neighborhood.

3. The strict application of the Long Beach Zoning Code will result in practical difficulties in the use of the subject property for which the Development Standard Variance is sought because the contemplated project, like many throughout the community, involves the alteration or improvement of a nonconforming residential building or other accessory nonconforming structure. As a result of the nonconformance, the Petitioners would not otherwise be able to make the contemplated improvements or use and enjoy their property in the same manner as other property owners that are similarly situated without receiving approval for the requested Development Standard Variance.

4. All relief granted by the BZA for the subject Petition should be only under Section 154.134 of the Zoning Code as no other relief from any other Sections is properly before the BZA for consideration.

Based on the forgoing findings as well as due regard for the requirements of both state and local laws, it is the decision of the BZA to approve and grant the requested Standard Development Variance to allow Petitioners to construct a 20' x 20' addition to their deck on the southwest side of the residence and a 12' x 20' four seasons room on the east side of the residence, which will allow for the alteration and improvement of a nonconforming residential building or other accessory nonconforming structure resulting in increases of the footprint by 640 sq. ft. and volume by 240 sq. ft. subject to the following determinations and/or conditions:

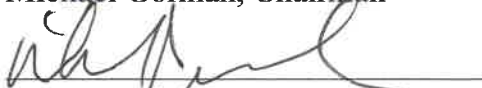
- 1. The Standard Development Variance is granted as relief only from Section 154.134 of the Zoning Code as Petitioners previously withdrew their request for relief from Section 154.057;**
- 2. No part of these Findings and Decisions shall be deemed to include any consideration or determination regarding any other Section(s) of the Zoning Code, including as no relief under any other Section(s) was requested of or otherwise properly before the BZA for consideration as part of the subject Petition; and**
- 3. Petitioners must obtain all required and applicable permits, including, but not limited to, a building permit, prior to the commencement of any work, all of which shall be based on and subject to the drawings and plans submitted to the BZA for consideration under the Petition.**

Dated this 14th day of July, 2020.

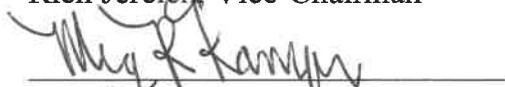
LONG BEACH ADVISORY BOARD OF ZONING APPEALS



Michael Gorman, Chairman



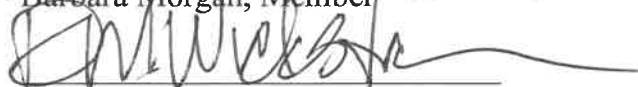
Rich Jercich, Vice-Chairman



Meg Kanyer, Member



Barbara Morgan, Member



Doug Wickstrom, Member

**Long Beach Advisory Board of Zoning Appeals
Findings and Decisions
Development Standard Variance(s)**

Petition No.: _____

Petitioner(s)/Owner(s): Patrick and Rebecca McCusker.

Common Address: 2208 Chastleton Drive.

Legal Description: *See attached Exhibit "A", which is incorporated into and made a part of these Findings and Decisions by virtue of this reference.*

Request: Petitioners request Development Standard Variances from Sections 154.051(B) and 154.130 for the purpose of constructing a shed on their nonconforming lot. The contemplated project would include a floor area of the shed that would exceed 1% of the size of their zoning lot and result in the enlargement or alteration of a non-conforming structure in a way that increases its nonconformity due to the size of Petitioners' lot all of which is generally prohibited under Sections 154.051(B) and 154.130, respectively.

Date Public Hearing(s) Held: July 14, 2020.

The Long Beach Advisory Board of Zoning Appeals ("BZA"), after giving due consideration to the Petitioner's Petition for Standard Development Variance(s), supporting documents, testimony, and evidence presented during the public hearing on the subject Petition, other materials presented to the BZA that are part of the public record, and the legal requirements set forth under the Indiana and Long Beach Codes, the BZA now makes the following findings,

1. For relief sought by Petitioners under Section 154.051(B), Petitioners have failed to establish that the strict application of the Long Beach Zoning Code will result in practical difficulties in the use of their property.
2. For relief sought by Petitions under Section 154.130:

(A). The approval of the requested Development Standard Variance from the Town's general restriction against permitting the enlargement or alteration of a non-conforming structure in a way that increases its nonconformity due to the size of Petitioners' lot will not be injurious to the public health, safety, morals and general welfare because the contemplated

project will be constructed in a manner similar to other projects and improvements that exist or that have otherwise been allowed in and around the immediate vicinity of the subject property, and all construction will be in compliance with applicable provisions of the Town's Building Code.

(B). The use and value of the area adjacent to the property subject to the requested Development Standard Variance will not be affected in a substantially adverse manner because the project involves updating and improving the property while maintaining its general compatibility with the character of the immediate neighborhood.

(C). The strict application of the Long Beach Zoning Code will result in practical Difficulties in the use of the subject property for which the Development Standard Variance is sought because the subject property, like many throughout the community, is a nonconforming lot. As a result of the nonconformance, the Petitioners would not otherwise be able to make the contemplated improvements or use and enjoy their property in the same manner as other property owners that are similarly situated without receiving approval for the requested Development Standard Variance.


3. All relief granted by the BZA for the subject Petition should be only under Section 154.130 of the Zoning Code as no other relief from any other Sections is properly before the BZA for consideration.

Based on the forgoing findings as well as due regard for the requirements of both state and local laws, it is the decision of the BZA to (1) deny the requested Standard Development Variance from the requirements of Section 154.051(B) that would allow Petitioners to construct a shed with a floor area would exceed 1% of the size of their zoning lot and (2) approve and grant the requested Standard Development Variance from the requirements of Section 154.130 to allow Petitioners to construct a shed on their nonconforming lot subject to the following determinations and/or conditions:

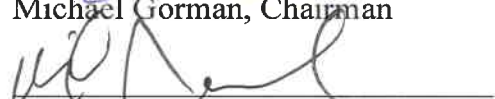
- A. The Standard Development Variance is granted as relief only from Section 154.130 of the Zoning Code;**
- B. No part of these Findings and Decisions shall be deemed to include any consideration or determination regarding any other Section of the Zoning Code, including as no relief under any other Section was requested of or otherwise properly before the BZA for consideration as part of the subject Petition; and**
- C. Petitioners must obtain all required and applicable permits, including, but not limited to, a building permit, prior to the commencement of any work, all of which shall be based on and subject to the drawings and plans submitted to the BZA for consideration under the Petition.**

Dated this 14th day of July, 2020.

LONG BEACH ADVISORY BOARD OF ZONING APPEALS



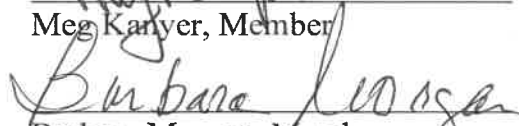
Michael Gorman, Chairman



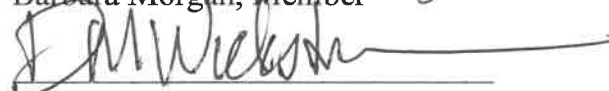
Rich Jercich, Vice-Chairman



Meg Kanyer, Member



Barbara Morgan, Member



Doug Wickstrom, Member

**Long Beach Advisory Board of Zoning Appeals
Findings and Decisions
Development Standard Variance(s)**

Petition No.: _____

Petitioner(s)/Owner(s): UPPSIDE, LLC by and through Scott and Brandi Upp.

Common Address: 2116 Lake Shore Drive.

Legal Description: *See attached Exhibit "A", which is incorporated into and made a part of these Findings and Decisions by virtue of this reference.*

Request: Petitioners request a Development Standard Variance for the purpose of constructing a new seawall extension that will be both greater than three feet (3') from the side foundation of their primary structure and extend into their side setback by more than three feet (3'), which is generally impermissible under Sections 154.203(3) and/or 154.057 of the Town's Zoning Code.

Date Public Hearing(s) Held: July 14, 2020.

The Long Beach Advisory Board of Zoning Appeals ("BZA"), after giving due consideration to the Petitioners' Petition for Standard Development Variance, supporting documents, testimony, and evidence presented during the public hearing on the subject Petition, other materials presented to the BZA that are part of the public record, and the legal requirements set forth under the Indiana and Long Beach Codes, the BZA now makes the following findings,

1. The approval of the requested Development Standard Variance from the Town's general restriction against allowing the construction and installation of seawall extension that will be both greater than three feet (3') from the side foundation of a primary structure and extend into a side setback by more than three (3') will not be injurious to the public health, safety, morals and general welfare because the contemplated seawall extension is required and necessary to reasonably preserve the shoreline and protect the subject property as well as neighboring properties, the project will comply with and be constructed in compliance with the applicable terms of all Long Beach Town Ordinances, and Petitioners has secured or will secure all required federal, state, county, and local permits and approvals.
2. The use and value of the area adjacent to the property subject to the requested

Development Standard Variance will not be affected in a substantially adverse manner because the project involves updating and improving the property while maintaining its general compatibility with the character of the immediate neighborhood and is also required and necessary to reasonably preserve the shoreline and protect the subject property as well as neighboring properties.

3. The strict application of the Long Beach Zoning Code will result in practical difficulties in the use of the subject property for which the Development Standard Variance is sought because the property is in peril due to its location along the shoreline of Lake Michigan combined with recent conditions of the Lake and erosion along the shoreline. If Petitioners are not allowed to install the seawall extension despite the determination being made that it is required and necessary to reasonably preserve the shoreline and protect the subject property, they are at risk of suffering significant damage and, potentially, a total loss of their property, due to circumstances beyond their control.

4. All relief granted by the BZA for the subject Petition should be under Sections 154.203(3) and/or 157.057 of the Zoning Code as no other relief from any other Sections is properly before the BZA for consideration.


Based on the forgoing findings as well as due regard for the requirements of both state and local laws, it is the decision of the BZA to approve and grant the requested Standard Development Variance to allow Petitioners to construct a side seawall extension that will be six feet (6) from the side foundation of their primary structure and extend into their side setback by more than three feet (3'), which is generally impermissible under Sections 154.203(3) and/or 154.057 of the Town's Zoning Code subject to the following determinations and/or conditions:

- 1. The Standard Development Variance is granted as relief from Sections 154.203(3) and/or 154.057;**
- 2. No part of these Findings and Decisions shall be deemed to include any consideration or determination regarding any other Section(s) of the Zoning Code, including as no relief under any other Section(s) was requested of or otherwise properly before the BZA for consideration as part of the subject Petition; and**
- 3. On January 16, 2020, the Building Commission granted a Building Permit for the side seawall extension. Said Permit was conditioned on Petitioners obtaining a variance for such construction with the understanding that if the variance was not obtained, the side seawall extension must be removed at Petitioners' expense. On February 14, 2020, the Building Commission approved construction of the side seawall extension based on approved engineered drawings and related submissions by Petitioners, all of which are part of the BZA's record. As of the date of this public hearing, construction of the side seawall extension has been completed.**


4. The BZA is mindful of and notes that any subsequent action or decision regarding the seawall located on the subject property by any governing body or entity, including, but not limited to, the Town of Long Beach, Long Beach Building Commission, Long Beach Special BZA, an Indiana court, or any Indiana governmental or administrative agency, may also apply to the variance granted for the side seawall extension.

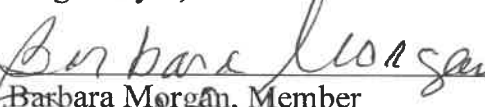
Dated this 14th day of July, 2020.

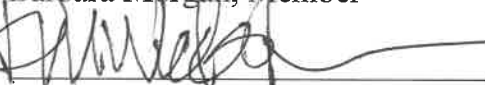
LONG BEACH ADVISORY BOARD OF ZONING APPEALS


Michael Gorman, Chairman


Rich Jercich, Vice-Chairman


Meg Kanyer, Member


Barbara Morgan, Member


Doug Wickstrom, Member

**Long Beach Advisory Board of Zoning Appeals
Findings and Decisions
Development Standard Variance(s)**

Petition No.: _____

Petitioner(s)/Owner(s): Michael Magee.

Common Address: 2120 Lake Shore Drive.

Legal Description: *See attached Exhibit "A", which is incorporated into and made a part of these Findings and Decisions by virtue of this reference.*

Request: Petitioner requests a Development Standard Variance for the purpose of constructing a new seawall extension that will be both greater than three feet (3') from the side foundation of their primary structure and extend into their side setback by more than three feet (3'), which is generally impermissible under Sections 154.203(3) and 154.057 of the Town's Zoning Code.

Date Public Hearing(s) Held: July 14, 2020.

The Long Beach Advisory Board of Zoning Appeals ("BZA"), after giving due consideration to the Petitioner's Petition for Standard Development Variance(s), supporting documents, testimony, and evidence presented during the public hearing on the subject Petition, other materials presented to the BZA that are part of the public record, and the legal requirements set forth under the Indiana and Long Beach Codes, the BZA now makes the following findings,

1. The approval of the requested Development Standard Variance from the Town's general restriction against allowing the construction and installation of seawall extension that will be both greater than three feet (3') from the side foundation of a primary structure and extend into a side setback by more than three (3') will not be injurious to the public health, safety, morals and general welfare because the contemplated seawall extension is required and necessary to reasonably preserve the shoreline and protect the subject property as well as neighboring properties, the project will comply with and be constructed in compliance with the applicable terms of all Long Beach Town Ordinances, and Petitioner has secured or will secure all required federal, state, county, and local permits and approvals.
2. The use and value of the area adjacent to the property subject to the requested

Development Standard Variance will not be affected in a substantially adverse manner because the project involves updating and improving the property while maintaining its general compatibility with the character of the immediate neighborhood and is also required and necessary to reasonably preserve the shoreline and protect the subject property as well as neighboring properties.

3. The strict application of the Long Beach Zoning Code will result in practical difficulties in the use of the subject property for which the Development Standard Variance is sought because the property is in peril due to its location along the shoreline of Lake Michigan combined with recent conditions of the Lake and erosion along the shoreline. If Petitioner is not allowed to install the seawall extension despite the determination being made that it is required and necessary to reasonably preserve the shoreline and protect the subject property, he is at risk of suffering significant damage and, potentially, a total loss of their property, due to circumstances beyond their control.

4. All relief granted by the BZA for the subject Petition should be under Sections 154.203(3) and/or 154.057 of the Zoning Code as no other relief from any other Sections is properly before the BZA for consideration.

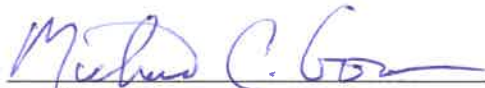
Based on the forgoing findings as well as due regard for the requirements of both state and local laws, it is the decision of the BZA to approve and grant the requested Standard Development Variance to allow Petitioner to construct a seawall extension that will be six feet (6') from the side foundation of their primary structure and extend into their side setback by more than three feet (3'), which is generally impermissible under Sections 154.203(3) and/or 154.057 of the Town's Zoning Code subject to the following determinations and/or conditions:

- 1. The Standard Development Variance is granted as relief from Sections 154.203(3) and/or 154.057 of the Zoning Code;**
- 2. No part of these Findings and Decisions shall be deemed to include any consideration or determination regarding any other Section(s) of the Zoning Code, including as no relief under any other Section(s) was requested of or otherwise properly before the BZA for consideration as part of the subject Petition; and**
- 3. On January 16, 2020, the Building Commission granted a Building Permit for the side seawall extension. Said Permit was conditioned on Petitioners obtaining a variance for such construction with the understanding that if the variance was not obtained, the side seawall extension must be removed at Petitioners' expense. On February 14, 2020, the Building Commission approved construction of the side seawall extension based on approved engineered drawings and related submissions by Petitioners, all of which are part of the BZA's record. As of the date of this public hearing, construction of the side seawall extension has been completed.**

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Dated this 14th day of July, 2020.

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