



**ZONING BOARD OF APPEALS**

June 1, 2021

A regular meeting of the City of Petoskey Zoning Board of Appeals was conducted virtually from remote locations, with staff at the City Hall Council Chambers on Tuesday, June 1, 2021. Roll was called at 7:00 P.M.

Present: Ben Crockett, Petoskey, Emmet County, MI  
Mary Clinton, Petoskey, Emmet County, MI  
Jim Knibbs, Petoskey, Emmet County, MI  
Lori Pall, Petoskey, Emmet County, MI  
Jessica Shaw-Nolff, Petoskey, Emmet County, MI

Others: Jane Fisher, 110 Arlington Avenue  
Walter Howell, 601 Winter Park Lane  
Dorothy Mills, 318 Fulton Street  
Rick Neumann, 610 Grand Avenue  
David O'Neil, 1480 Bester Road, Harbor Springs

Staff: Amy Tweeten, City Planner  
Lisa Denoyer, Administrative Assistant

Upon motion and support, the minutes from May 4, 2021 regular meeting were approved 4-0-1, with Commissioner Shaw-Nolff abstaining.

**Case #852 – Request for Front-Yard  
Setback Variance at 601 Winter Park Lane**

Staff informed the Board that the property owner/applicant would like to remove the existing structure and reconstruct a new residence, continuing the non-conforming front-yard setback of two feet. The stated practical difficulty is the narrow shape and topography of the property.

Staff reviewed the site plan, elevation drawings, required setbacks and existing setbacks and commented that the lot was unique in that there are not three houses adjacent to the property, which makes it difficult to determine an average setback, so that standard 25-foot front-yard setback is used. Staff then informed the board that no public comments had been received on the request.

Board member Clinton questioned the property lines on the site plan as they did not appear to go to the street.

Staff explained that in the City the property line goes to the right-of-way and does not always extend to the street.

Board member Pall asked for an explanation of where the 13-foot corner-front setback was measured from.

Staff responded that when looking at the parcel map it appeared as though the property was triangular shape so originally Grand Avenue was considered the other corner front and that is where the 13-foot setback comes from. However, when the site plan was submitted it was discovered that the property has four sides and therefore the side facing Arlington Avenue would be considered a corner front so Grand Avenue is a side yard with a 10-foot required setback.

Board member Knibbs asked staff if curb and gutter were to be installed along both sides of Winter Park Lane, would it be installed along the edge of the existing street.

Staff responded that she imagines it would be and does not envision future widening of Winter Park Lane.

Board member Pall asked if sidewalks were a possibility. Staff responded that it is always a possibility when we have right-of-way and if they were installed they would be placed between the curb and the property line.

Chairperson Crockett asked for confirmation that there are currently no sidewalks on either side of Winter Park Lane. Staff responded that there were not.

David O'Neil, Architect, explained that the purpose for requesting to maintain the existing setback is due to the fact that it would be difficult to build a house within the required 25-foot setback.

Walter Howell, 601 Winter Park Lane, stated that the only way to build a house on the lot would be to maintain the existing two-foot setback and informed the Board that the covered porch entrance of the new home has been set back approximately five feet from the property line to break up the long wall that currently exists.

Chairperson Crockett asked the applicant to explain the practical difficulty and need to request a variance.

Mr. O'Neil responded that the 25-foot setback and the slope of the property creates a very small building envelope.

Mr. Howell responded that the topography and the narrowness of the lot where the two streets meet Arlington make it difficult to build within the required setbacks. He believes that the location of the existing house is the best fit for the property.

Board member Clinton stated that there may be a little bit of room to move the house a few feet away from Winter Park Lane and still be within the Grand Avenue setback.

Mr. Howell responded that there is a full basement under the house that they would like to keep.

Mr. O'Neil responded that a timber retaining wall and the significant slope of the property would make it difficult to move the house back.

Board Member Clinton asked if the elevation changes along the terraced garden were the same beyond it, towards Grand Avenue.

Mr. Howell responded that there is almost a 20-foot difference in grade from the front of the property to the rear.

Chairperson Crockett asked what the square footage of the proposed house would be.

Staff responded that the current lot coverage is 1,728 square feet and the proposed lot coverage is 2,636 square feet.

Board member Pall stated that the first floor plan shows total 2,845 square feet for both the first and second floors.

Mr. O'Neil responded that she was correct. The first floor plan is roughly 2,500 square feet with the garage included.

Chairperson Crockett asked if the hatched area on the site plan included the existing garage. Mr. O'Neil responded that it did.

Board member Knibbs stated that when someone is building a new house they have a lot of opportunity to make it conform to the required zoning. He can appreciate the owner wanting to build over the existing basement and noted that the proposed house would exceed the existing basement. He stated that he cut out the footprint of the proposed house to see if there was a way for it to fit within the setbacks and there was not; however the house could be built smaller and set back towards Grand Avenue and to the east with the garage reconfigured to enter off the street as it currently does.

Board member Clinton stated that if they enforced the 25-foot setback that she would agree with Mr. O'Neil that they could not build much of a house on the lot. She believes that to build any kind of house on this property the Board would need to grant some variance and the question is how much. The look of the proposed house is nice with the setback and questioned if the entire house could be setback five feet to the depth of the porch.

Board member Knibbs reminded the Board that they are not talking about an empty lot but rather a lot with an existing house that is functioning and is grandfathered in to the conditions of the lot. If it were an empty lot he would be more compelled to agree with Board member Clinton.

Board member Clinton asked Board member Knibbs if he felt there was a way to build the house within the 25-foot setback.

Board member Knibbs responded that the proposed house could not be built within the required setback but being that they are designing a new house they could make it fit. He understands their desire to keep the existing foundation but cost cannot be a factor in the determination of a variance.

Board member Shaw-Nolff stated that her main thought when reviewing this request was the property on West Lake Street that was also building a new home and the Board determined that they needed to conform to existing setbacks. She does feel the property has some unique characteristics that make it a little more exceptional and agreed with Board member Clinton that a 25-foot setback along Winter Park Lane could not be met; however she felt they could do more than a two-foot setback.

Board member Pall stated that she cut out the existing structure because it is a functioning house and moved it around on the property and she believes the house could be pushed back closer to the terrace garden and sloped corner to give some relief to the setback. The owner is looking to build a substantial house on a small and challenging lot and she questioned if there was an opportunity for another design that fits the property better and gives more relief to the setbacks.

When taking down an existing structure and rebuilding it, the intent is to bring it more into conformity.

Board member Knibbs commented that he agreed with Board member Pall that the existing footprint of the house could be moved back to fit within the setbacks.

Board member Clinton asked if it would require moving it into the terrace garden and Board member Knibbs responded that it would be slightly into the terrace garden.

Chairperson Crockett stated that typically when someone is applying for a variance and it is denied it is because they have a square lot and no topography. This site does have its challenges in that it is an odd shape and has topography and those are potentially practical difficulties for using the lot for its intended purpose. He stated he would be open to a lesser variance and the 10-foot boundary on the other two sides give some internal consistency and suggested that a 10-foot setback would be justifiable.

Board member Clinton agreed with Chairperson Crockett and felt that a 10-foot setback on all sides except along Arlington Street would be doable.

Board member Knibbs stated that if the Board were to grant a 10- or 12-foot setback it would place the house about 22-feet from the street and that would be more conducive with the neighborhood.

Chairperson Crockett then went through the dimensional variance checklist and asked the Board if strict compliance with the dimensional requirements of the zoning ordinance prevent the applicant from using the property for the permitted purpose.

Board member Clinton responded that she felt it would support the variance based on the fact that a reasonable sized house with a garage could not be built with strict compliance and she believes it would not be realistic to ask the applicant to build a new house in this area without some sort of garage.

Board member Knibbs responded that he would agree with Board member Clinton if they were discussing an empty lot but this lot has an existing house that is functioning and he believes the Board needs to consider that. The site can be used as it is permitted now.

Board member Pall commented that the property currently has a two-car garage on it.

Chairperson Crockett commented that if the applicant were required to meet the 25-foot setback they might be able to build within the setback but the size of the home may not function as it is intended.

Board member Shaw-Nolff responded that she agreed with Board member Clinton and feels it would support the variance based on the unique characteristics of the property.

Chairperson Crockett then asked the Board if there was a way to accomplish the same purpose without a variance or with a lesser variance regardless of convenience or expense.

Board member Clinton responded that she is not an architect but she feels there is probably a way to do so. The house could be set back farther from Winter Park Lane, reconfigured and placed closer to the neighboring property on Grand Avenue.

Chairperson Crockett agreed with Board member Clinton and stated that he does not believe it supports the variance as it is currently requested as the setback could be less than 25-feet and still allow them to build a house.

Board member Knibbs responded that he too agreed with Board member Clinton.

Board member Shaw-Nolff responded that she believed a lesser variance would be reasonable.

Chairperson Crockett then asked the Board if the need for the variance was due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district.

Board member Knibbs responded that there are not many triangular shaped lots.

Board member Shaw-Nolff agreed and added that the terrain is also a unique factor.

Chairperson Crockett then asked the Board if granted, would the variance uphold the spirit and intent of the ordinance and be fair to neighboring properties.

Board member Clinton responded that she believes it depends on the amount of the variance that is being requested. A two-foot setback may not be upholding the spirit and intent of the ordinance and be fair to the neighboring properties; however, she believes that a lesser variance might be able to do that.

Board member Shaw-Nolff agreed with Board member Clinton.

Chairperson Crockett then asked the Board if the need for the variance had been created through previous action of the applicant.

Board member Clinton stated that she did not believe it was.

Chairperson Crockett agreed and stated that there is an existing house and the applicant would like to create something different and therefore has not created the practical difficulty.

At this time the meeting was opened for public comment.

Jane Fisher, 110 Arlington Avenue, commented that the existing house is in disrepair and as a homeowner in the area she is in favor of approval of the request. The new house would increase the value of neighboring properties and be a wonderful improvement as well.

Rick Neumann, 610 Grand Avenue, stated that he and his wife are not opposed to the variance request. The steep slope and wooded area on the property is a benefit to him and his wife, as well as the Howells and they would hate to see a house built in this area. Other properties along Winter Park Lane do not have standard setbacks and houses close to the street is a common character in the neighborhood.

Board member Knibbs asked staff if there was an average setback within the City being there are no houses to create an average setback for this property.

Staff responded that there is not as every neighborhood is different. Houses in the newer neighborhoods have a 25-foot setback, yet if you were to average Grand Avenue it would be different as the Neumann's house has a 20-foot setback but the next neighbor is very close to the street.

Board member Knibbs then asked if staff knew what the average setback was along Winter Park Lane.

Staff responded that she did not. She then mentioned the house across the street that that was remodeled and the owners maintained 60% of it, which allowed them to keep the old setbacks. The applicant was given this option and chose to start from scratch to build a house that is more functional.

Chairperson Crockett asked Board members if they had any suggestions or recommendations on a lesser variance and stated that a 10-foot setback would be consistent with existing setbacks on the property.

Board members Shaw-Nolff, Clinton and Knibbs agreed that a 10-foot setback would be consistent with the other setbacks and would consider it given the unusual characteristics of the lot.

Chairperson Crockett stated that he would be interested in hearing from the applicant to see if a lesser variance could be considered.

Mr. O'Neil responded that his client would like to go back to the drawing board and maintain 60% of the existing house in order to keep the existing setback.

Mr. Howell responded that they would be better off keeping what they have than moving the house over to meet a lesser setback and that it would not be possible to build the house into the side of the hill.

Board member Clinton stated that, per the Board's discussion, it sounded as though they would either deny the request or grant a lesser variance. She then asked if Mr. Howell would be barred from a second request should he withdraw his request.

Staff responded that he could return with a second request; however, he could not make the same request.

Board member Pall asked what exactly it meant to maintain 60% of the existing structure as the house across the street no longer looks anything like the little house that was once there.

Staff responded the house could be added on to in ways that does not increase the non-conformity and believes they must maintain 60% of the building value.

Board member Knibbs responded that he believes that you could add on to the height and sides of a structure so long as it did not exceed the maximum height and minimum setbacks. So long as 60% of the existing home were still intact it would meet the requirement.

Board member Shaw-Nolff asked if the foundation was included in the 60%. Staff believed it was exclusive of the foundation.

Staff then read aloud Section 1702(4)(b) of the zoning ordinance that states:

*Should such structure be destroyed by any means to an extent of more than 60 percent of its replacement costs, exclusive of the foundation, it shall be reconstructed only in conformity with the provisions of this ordinance.*

At this time, Board member Knibbs made a motion to approve a front-yard setback for construction of a house in Case #852 of 10-feet at 601 Winter Park Lane based on the findings of fact that the required 25-foot setback is too restrictive, the site is of unusual shape and topography, and the comments provided by the applicant and neighboring property owners that demonstrate there is a practical difficulty created by Section 1600 of the Zoning Ordinance due to lot size, topography, and inconsistent average setbacks.

Board member Clinton requested that the motion include that the need for the variance was not created by the applicant and seconded Board member Knibbs' motion.

Board member Knibbs approved the amendment and a roll call vote was taken. Motion carried 5-0.

**Case #853 – Request for Temporary Use for a  
Farmers' Market at 900 Emmet Street**

Staff informed the board that the farmers' market is again proposed to be held on Saturdays from 9:00 A.M. to 1:00 P.M. beginning June 19 through October 2, 2021. The property is within the B-2B Mixed Use Corridor, which allows drive-through and open-air businesses as special condition uses and no neighborhood complaints have been received.

The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.

- The granting of the temporary use shall be granted in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.
- All setbacks, land coverage, off-street parking, lighting and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the City of Petoskey, shall be made at the discretion of the board of appeals.
- In classifying uses as not requiring capital improvement, the board of appeals shall determine that they are either demountable structures related to the permitted use of the land; recreation developments, such as, but not limited to: golf driving ranges and outdoor archery courts; or structures which do not require foundations, heating systems or sanitary connections.
- The use shall be in harmony with the general character of the district.
- No temporary use permit shall be granted without first giving notice to owners of adjacent property of the time and place of a public hearing to be held as further provided for in this Ordinance. Further, the board of appeals may seek the review and recommendation of the Planning Commission prior to the taking of any action.

Board member Shaw-Nolff asked if there were any changes from years past.

Staff responded that previous requests included a food truck rally and that it was not included in this request.

Board member Clinton asked if there had been any ordinance changes since the last approval. Staff responded that there had not been.

Dorothy Mills, 318 Fulton Street, stated that the request for the farmers market was the same as in years past and that they were not planning on having the food truck rally due to COVID restrictions.

Board member Clinton stated that she did not see any reason to deny the request given there were no changes.

Board member Shaw-Nolff agreed given no comments had been received from neighbors.

Chairperson Crockett also agreed and commented that it seemed to be a successful event.

At this time, Board member Clinton made a motion, seconded by Board member Pall, to approve a temporary use permit for a weekly market at 900 Emmet Street, from 9:00 A.M. to 1:00 P.M., June 19 through October 2, 2021, with the condition that the site be arranged as close as possible to the site plan in the submitted materials. The motion was based on the findings that:

1. The granting of the temporary use does not constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted;
2. The temporary use does not require capital improvements; and
3. The temporary use is in harmony with the general character of the district.

Motion carried 5-0.

### **Election of Officers**

Chairperson Crockett informed the board that the current members of the Zoning Board of Appeals of the City of Petoskey shall elect from among their members a chair and vice-chair/secretary during its first regular or special meeting following the month of April of each year. Each person elected shall serve until the next election of officers or until his or her tenure on the board is terminated if it occurs before the next election.

The chair shall preside at all meetings and shall decide points of order and procedure, subject to the provisions of these rules and with the guidance of Robert's Rules of Order, as revised. The chair may also work with the zoning administrator to develop meeting agendas.

The vice-chair/secretary shall assume the duties of the chair in the absence of the chair, and review the meeting minutes before they are sent to the full board for approval.

He then asked staff to outline the procedures for electing the chair and vice-chair.

Staff responded that anyone could submit names for nomination and a majority vote was needed or approval.

Board member Clinton asked if the current chair and vice-chair wished to maintain their positions.

Chairperson Crockett responded that he would prefer not to continue as chair due to upcoming commitments.

Board member Pall stated that she appreciated Chairperson Crockett's work as chair and that he has done a marvelous job, especially with the Zoom meetings. She stated that she would be willing to stay on as vice-chair/secretary.



Board member Clinton stated that she does not have any interest in the chair position as she is already committed to two other boards.

Board member Shaw-Nolff stated that she felt someone with more seniority than her should be considered for the position.

Board member Knibbs stated that he did not wish to be chair and asked if they should postpone action to a future meeting.

Staff responded that they could postpone the election.

At this time, Board member Knibbs made a motion, seconded by Board member Clinton to postpone the election of board members until the next scheduled meeting. Motion carried 5-0.

### **Updates**

Staff informed the Board that she had received a notice of appeal regarding the setback variance denial at 326 West Lake Street. The basis of the appeal was insufficient finding to deny the variance request. She will keep them updated as she receives more information.

Staff then informed the Board that Matthew Frentz, 615 Michigan Street, had requested a copy of the transcript from the Circuit Court proceedings. According to City Attorney, Matt Cross, this is generally the first step in making a further appeal. It is believed that he is planning to appeal the case to the Michigan Court of Appeals.

Board member Clinton explained that the Court of Appeals is by leave, not by right, which means that the court could decline the request to appeal.

Staff informed the Board that the applicant for 624 Charlevoix Avenue is required to pull a building permit within one year for the variance to stay and it appears as though they are going to get a permit for demolition. If a permit is pulled for demolition they will have another six months to begin on the site plan; however, if they do not start on the site plan the approval will expire. There has been a lot of interest in the site, so the Board may receive another request for a different site plan.

Board member Clinton asked if the variance would transfer to a new owner should the land sell. Staff responded that it would as the variance runs with the land, not the owner.

Board member Pall asked if staff was going to look into the property at 322 West Lake Street after concerns were raised at the last meeting if they were within the setbacks of the zoning ordinance.

Staff responded that she recently received a FOIA on that property and she suspects it is related to the Circuit Court appeal for 326 West Lake Street. What she recalls happening was a request from John Thurman to change the stairway to a second-story deck, which was denied by the Board. It is unknown if he or a subsequent owner went ahead with the deck. She will check if there was a building permit issued because there was not a zoning permit issued.

The meeting was then adjourned at 8:42 P.M.