



ZONING BOARD OF APPEALS

September 22, 2021

A special meeting of the City of Petoskey Zoning Board of Appeals was conducted in the City Hall Council Chambers on Tuesday, September 22, 2021. Public was invited to attend in person and via Zoom. Roll was called at 7:00 P.M.

Present: Lori Pall, Chairperson
Ben Crockett
Chris Hinrichs
Jim Knibbs
Jessica Shaw-Nolff

Absent: Mary Clinton
Scott Morrison

Others: Gordon Becker, 1209 Hill Street
Michael and Denise Croake, 604 Bay Street

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

**Case #858 – Request for Front- and Side-Yard
Setback Variances at 120 East Lake Street**

Staff informed the Board that the request was for front- and side-yard setback variances to allow access to three residential units. The Building Inspector confirmed that with only three units proposed, the structure is not required to provide a barrier-free unit.

Denise Croake, 604 Bay Street, informed the Board that they were only requesting a side-yard setback variance as it had been determined that an ADA unit was not required with only three units in the building, as there was no reason to install an ADA ramp, this eliminated the need for a front-yard setback variance.

Board member Shaw-Nolff asked if the side-yard setback was to allow for a side entrance.

Ms. Croake responded that there was once a driveway that allowed entrance to the back of the house. That driveway was removed some time ago and cannot be replaced as a retaining wall is now where the driveway once was. They would like to create a side entrance for the second and third floor units. The existing stairs would remain and a walkway would continue to the back of the house.

Board member Hinrichs commented that he was familiar with the property as he had worked with the previous owner. He believes the lot is unique given its shape and topography and the interior layout of the building would be challenging to change.

Ms. Croake commented that they had been working with a designer and the proposed plan was the best design layout they could come up with given the existing floor plan.

Board members reviewed the dimensional variance checklist and determined that there was no way to accomplish the same purpose without a variance or lesser variance; the unusual shape and topography of the lot created circumstances that were unique to the property; the variance would uphold the spirit and intent of the ordinance and have minimal impact on the neighbors; and the need for a variance was pre-existing and not created through actions of the applicant.

At this time, Board member Knibbs made a motion, seconded by Board member Hinrichs, to approve the request for a 5.25-foot side-yard setback variance for a stairway at 120 East Lake Street with the conditions that it be built as drawn on the blueprints submitted, based on the findings of fact in the submittal materials and comments provided by the applicant that demonstrates there is a practical difficulty created by Section 1600 of the Zoning Ordinance and that the proposed changes are not contrary to the intent of the ordinance. Motion carried 5-0.

Case #859 – Request for a Driveway Opening Variance at 1209 Hill Street

Staff informed the Board that the variance request was to allow the continuance of a driveway opening width that was expanded without approval. The ordinance allows driveway curb cuts of 16 feet in single family districts, and the opening had been widened to 26 feet. The opening is required to meet construction standards regardless of approved width.

Board member Crockett asked if the existing curb had been ground down.

Gordon Becker, 1209 Hill Street, stated that his contractor did not advise him that a permit was needed, and he would be pay for the curb repairs regardless of the outcome of the request. His practical difficulties were stated in his letter submitted with the application, and he added that school traffic is also an issue. With the curb cut at 16 feet he would have to back out of his driveway at an angle when parking in the widened portion of his driveway and that is hazardous. The ordinance seeks uniformity, and unfortunately Hill Street does not have uniformity when it comes to driveway openings. The average width of driveways on Hill Street is 20 to 22-½ feet. The spirit of the ordinance is to maintain the character and he does not believe that a wider driveway detracts from neighbors. Backing out of the driveway at an angle with school traffic is a safety concern.

Board member Knibbs asked if the driveway had been widened or if it was existing and tapered down to the 16-foot wide curb cut.

Chairperson Pall stated that part of the problem is parking three vehicles in the garage and driveway.

Mr. Becker responded that the driveway had been widened and that he drives a truck in the fall/winter and he and his wife drive cars in the spring/summer. Therefore, he needed more space to park the truck.

Staff showed the Board an image from 2019, prior to the changes, which showed the tapering of the driveway at the front of the garage.

Mr. Becker responded that the entire driveway had been removed and replaced as the base was deteriorating and causing issues with the asphalt surface.

Board member Crocket asked if the applicant was aware of the ordinance and if he had contacted the City.

Mr. Becker responded that he was not aware of the ordinance until he received a letter from staff. The contractor did not inform him that there would be any changes to the curb cut and he was not home at the time the work was being done. He has been in touch with City staff since receiving the letter.

Board member Shaw-Nolff asked if there was any advantage to having the homeowner return the curb cut to 16 feet.

Staff responded that there was not, however, part of the reason for the 16-foot width requirement is to avoid expansive driveways.

Board member Crockett asked if sidewalks would be installed along the north side of Hill Street and staff responded that they would be.

Board member Hinrichs commented that the Board had a hard choice to make. He could see the applicant's point and that he relied on a contractor. However, the Board is not responsible for bailing out an applicant.

Board member Knibbs stated that he could see allowing a compromise between 17 and 24 feet given the average driveway width in the neighborhood is 20 to 22-½ feet and a 16-foot width is kind of narrow.

Chairperson Pall commented that driveways crossing sidewalks and vehicles backing out at an angle can be a safety concern. She could see allowing some relief in order to make it safe to back out of the driveway.

Board member Crockett stated that he was sympathetic to the situation. However, the condition was created by the applicant and there is nothing unique about the property. The Board is tasked with following the guidelines, and he is struggling to see how it qualifies for a variance.

Chairperson Pall commented that there are other solutions and that a parking path could be considered if there was enough space.

Staff responded that there is an allowance of up to 40% of a required front yard to be a paved surface.

Mr. Becker responded that his driveway is currently at 19%.

Board member Knibbs asked if a wider drive or turn-around path would be preferred.

Mr. Becker responded that a 25-foot wide piece of property between him and his neighbor to the west is owned by a family with abutting property that fronts Mitchell Street, so there is not enough space to widen the driveway one car width and meet the required setback.

Board member Crockett stated that he did not see how compliance with the dimensional requirements of the zoning ordinance would prevent the applicant from using the property for the permitted use. Board members Hinrichs and Shaw-Nolff agreed.

Board member Crockett commented that the purpose of a driveway is to park or enter a garage.

Board member Knibbs commented that vehicles have gotten larger over time and are not as small as they once were.

Staff informed the Board that the ordinance had been changed in 2014 or 2015 and the Planning Commission could consider changing the maximum width if it does not make sense.

Board member Hinrichs commented that the property is not unique in any way.

Board member Crockett stated that the requested variance would not be unfair or harmful to the neighbors and it is similar in size to neighboring properties. Board member Shaw-Nolff agreed.

Chairperson Pall commented that the need for a variance was created by the action of the contractor and that it is unfortunate for the property owner.

Board member Knibbs commented that while review of the checklist indicates not supporting the request for a variance, neighboring properties have driveways that exceed 16 feet in width. An 18 to 24 foot width would be a reasonable compromise.

Board member Shaw-Nolff asked if the Board could deny the variance and not require any change.

Staff responded that the curb has to be redone regardless of the outcome.

Chairperson Pall asked if just the curb cut would have to be restored to the required width and not the entire driveway.

Staff responded that the area in the right-of-way would have to be restored. Some pavement between the curb and property line would have to be removed.

Chairperson Pall stated that the busiest traffic times would be around 8:00 A.M. and 3:15 P.M. and the rest of the day would be pretty quiet.

Staff responded that it also gets busy when there are sporting events.

Board member Hinrichs commented that he felt a compromise that is comparable to the rest of the neighborhood would be an option.

Board member Knibbs commented that he felt a 20-foot width would be acceptable.

Board member Crockett commented that he understood the interest in compromise and it is good to look at what the applicant is requesting. However, there are so many check marks on the regulation checklist that do not support the variance, and the Board is not responsible for bailing the applicant out. He would move toward denying the request.

Chairperson Pall stated that the maximum driveway width is 16 feet per the ordinance and the Board can recommend that the Planning Commission review and consider allowing a wider opening. While she is sympathetic with the applicant, she does not see a practical difficulty.

Board member Crockett commented that the ordinance was changed in 2016 and the recent change says that this is what the legislative body wants. If the change were older then maybe there would be a need to change it.

Board member Shaw-Nolff asked the applicant if the curb removal was part of the request when he spoke with the contractor about doing the work.

Mr. Becker responded that there was no discussion of curb removal and offered an alternate width of 20 feet as he has measured the driveway and feels that would work safely.

At this time, Board member Crockett made a motion, seconded by Board member Hinrichs, to deny the request for a 10-foot driveway opening variance at 1209 Hill Street based on the findings of fact that the property has no unique situations for a driveway and the need was created by the applicant. Motion carried 3-2. Staff read from the ordinance and confirmed that the motion carried as it was to deny the request. Had the motion been to approve the request a 4-1 or 5-0 vote would have been required for the motion to pass.

Public Comment

No public comments were received.

Updates

Staff informed the Board that their October meeting agenda would include a parking variance for 120 East Lake Street. She had expected to receive a parking variance request for the proposed medical marijuana provisioning center at 403 West Mitchell Street. However, an application was not received by the submittal deadline.

Staff was contacted by the City Attorney stating that Mr. Frenz would like to reach a settlement. Staff believes the case needs to move forward and the attorney is currently working on getting the case thrown out.

The City Attorney filed a brief last week for the Corcoran case. No court date has been set. The attorney feels confident as the main reason for the request was due to having a large family and that is not a reason for the Board to grant a variance.

Staff is working with the Emmet County Building Department on the second-story deck on a neighboring property that the Corcorans also own. The building department was told that a zoning permit was denied and they contacted the owner but have not heard any more from Mr. Corcoran.

The meeting was then adjourned at 8:12 P.M.