



ZONING BOARD OF APPEALS

Tuesday, February 1, 2022

1. Roll Call – 7:00 P.M. – City Hall Council Chambers
2. Approval of Minutes – December 7, 2021 Regular Meeting
3. New Business
 - a. Case #863 – A front yard fence variance request for 908 East Lake Street
4. Public Comment
5. Updates
6. Adjournment

You may also join the meeting remotely

<https://us02web.zoom.us/j/88666371127>

Meeting ID: 886 6637 1127

Dial by Phone: +1 646 558 8656 US (New York)

If you have any questions you may contact the City Clerk's Office before the meeting by email or phone: aterry@petoskey.us or 231-347-2500.

According to the Attorney General, interrupting a public meeting in Michigan with hate speech or profanity could result in criminal charges under several State statutes relating to Fraudulent Access to a Computer or Network (MCL 752.797) and/or Malicious Use of Electronics Communication (MCL 750.540).

According to the US Attorney for Eastern Michigan, Federal charges may include disrupting a public meeting, computer intrusion, using a computer to commit a crime, hate crimes, fraud, or transmitting threatening communications.

Public meetings are being monitored and violations of statutes will be prosecuted.



ZONING BOARD OF APPEALS

December 7, 2021

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

Present: Lori Pall, Chairperson
Chris Hinrichs
Jim Knibbs
Scott Morrison
Jessica Shaw-Nolff

Absent: Mary Clinton

Others: Myron Berry, Mountain Engineering
Dave Hansen, Scooby's Bottle Shop
Jack Turner, Counsel for First Property Holdings

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

Upon motion and support, the minutes from the November 2, 2021 regular meeting were approved with changes. Motion carried 5-0.

Case #862 – Parking Variance for 403 West Mitchell Street

Staff informed the Board that the request was for a parking variance for a special condition use at 403 West Mitchell Street. Currently there are eight on-street parking spaces and one on-site parking space at the rear of the property. Because this is a special condition use it is required to meet the ordinance standards. The applicant has gone before the Planning Commission and proposed to remove a portion of the building in order to create five additional parking spaces at the rear of the property. The Planning Commission voiced concerns with the existing spaces closest to the intersection of Ingalls and Mitchell and vehicles backing over the sidewalk with the proposed parking at the rear of the property. They felt the concept being presented tonight was the best option, which would allow six on-site parking spaces, one on-street parking space and one parallel parking space on Madison Street.

Chairperson Pall informed the Board that two letters of opposition had been received voicing concerns with the site, parking and safety issues.

Myron Berry, Mountain Engineering, informed the Board that the building site at 403 West Mitchell Street has been in existence since the 1950s. It started out as a butcher shop, then a bakery and is currently a bottle shop. He also informed the Board that there are eight existing parking spaces for patrons of the bottle shop to use, the current owner gave up parking when Mitchell Street was reconfigured, and he believes the proposed plan eliminates the safety issues at the intersection.

Jack Turner, counsel for First Property Holdings, stated that he believes the proposed plan satisfies the requirements of the ordinance in that strict compliance with the dimensional requirements of the zoning ordinance would prevent the applicant from using the property for the permitted purpose, the applicant went to the Planning Commission with a different plan and they gave strong feedback that the current plan was the better option, the current owner gave up parking in exchange for on-site parking, the variance requested would uphold the spirit and intent of the ordinance and would be fair to neighboring properties as well as provide substantial revenue for the City, and the need for a variance was not created through previous action of the applicant.

Board member Morrison asked if the variance request was for six parking spaces.

Staff responded that the ordinance requires eight on-site parking spaces and that parking spaces one through six are in the right-of-way.

Chairperson Pall commented that the Planning Commission's concerns with the previous plan were vehicles backing over the sidewalk.

Staff responded that Chairperson Pall was correct and that the revised plan showed the removal of a portion of the building with on-site parking at the rear of the building that would require vehicles to back over the sidewalk and there were no proposed changes to parking near the intersection of Ingalls Avenue and Mitchell Street.

Board member Shaw-Nolff commented that there was parking on Madison Street and Ingalls Avenue and asked if the right-of-way parking spaces would have to be removed if a variance was not granted.

Staff responded that there would be no change and the right-of-way parking would remain.

Chairperson Pall stated that there is concern, as stated in one of the letters received, that medical provisioning centers could become recreational marijuana facilities in the future and parking would be an issue. She asked staff if the Board could attach a condition of approval that a special condition use of parking can only be for a medical provisioning center, not a recreational marijuana facilities. She also stated that State legislature is proposing the removal of municipal control over short term rentals and the same could happen with medical provisioning centers in the future.

Staff responded that the Board could give direction to the Planning Commission to look closely at parking requirements and come up with requirements specific to recreational marijuana facilities. It is well known that recreational provisioning centers require a lot more parking than medical provisioning centers.

Board member Morrison asked why recreational provisioning centers would be required to have more parking if a retail use would only be required to have eight on-site parking spaces.

Staff responded that there is currently no ordinance language specific to parking for medical provisioning centers and that it falls under retail use requirement. She also stated that medical marijuana is not an impulse use and therefore the retail parking requirement is sufficient, but it has been demonstrated locally and in other communities that recreational marijuana facilities do have greater parking needs and specific requirements should possibly be looked at.

Board member Morrison asked to clarify that there is currently no language that would require more parking for recreational marijuana facilities and staff responded that there was not.

Board member Hinrichs commented that he has always assumed that the parking spaces along Ingalls Avenue were Scooby's and continued use does not seem like a stretch. He believes there is a unique situation with the site and there is limited ability to create on-site parking.

Board member Knibbs agreed with Board member Hinrichs and commented that it was unlikely that someone would park in the spaces to go elsewhere.

Staff responded that the Planning Commission gave direction to request a variance or try to find a way to create on-site parking and determined that on-site parking created a worse situation than the original plan. The spaces are used by the current owner and the Planning Commission would like the plan enhanced for safety purposes.

Board member Morrison asked if the applicant would have to go back to the Planning Commission if the variance were approved. Staff responded that they would.

Board member Shaw-Nolff commented that a neighbor mentioned concerns with safety and stated that she believes the property would be safer with the removal of the two parking spaces near the intersection.

Board member Knibbs commented that he believes the proposed use would likely have less traffic than the existing business.

Board member Morrison commented that making the parking safer would be an improvement.

At this time the meeting was opened for public comment. No public comment was received.

Board members then reviewed the variance checklist and based on the information provided and discussion determined that; strict compliance with the dimensional requirements of the zoning ordinance would prevent the applicant from using the property for its permitted use, there is no way to accomplish the same purpose without a variance or with a lesser variance regardless of convenience or expense, the need for the variance is due to a situation that is unique to the property and would not generally be found elsewhere in the same district, the variance would uphold the spirit and intent of the ordinance and would be fair to neighboring properties, and the need for the variance had not been created through previous action of the applicant. Board members also commented that the applicant had already gone before the Planning Commission for guidance and attempted to arrange the site without a variance but it was not seen as an improvement and any changes would be an improvement from the existing parking layout.

Board member Morrison asked if the proposed site would require additional parking if it were to become a gaming site for kids.

Staff responded that a gaming site would not be considered a retail use and the parking requirement would be different.

Board member Morrison asked the owner if a variance was requested when the use changed to a bottle shop.

Dave Hansen, Scooby's Bottle Shop, stated that they did not request a variance and that two parking spaces on Ingalls Avenue were lost when the City realigned Mitchell Street.

Board member Morrison commented that he believes the proposed changes would make the area safer and that he does not believe the variance check list talks about what the business is and to him it would be the Planning Commission's decision.

Staff clarified that the applicant was before the Board for a parking variance and would then go through the Planning Commission public hearing process for the special condition use and site plan approval.

Board member Morrison commented that he had no issues with the request and would feel uncomfortable denying a variance for something that has been in existence for years.

At this time, Board member Hinrichs made a motion, seconded by Board member Morrison, to approve a parking variance for six (6) spaces at 403 West Mitchell Street, thus allowing parking spaces in the street right-of-way to be used for the provisioning center based on the findings of fact in the submittal materials that the size and orientation of the site prevents the addition of on-site parking spaces combined with the legacy spaces currently used by Scooby's Bottle Shop that demonstrate there is a practical difficulty created by Sections 1704 and 1717 of the Zoning Ordinance and that the proposed changes are not contrary to the intent of the ordinance and would not cause substantial detriment to the public good or substantially impair the intent and purpose of the ordinance. Motion carried 5-0.

Public Comment

No public comments were received.

Updates

Staff had no updates.

The meeting was then adjourned at 7:41 P.M.



City of Petoskey

Agenda Memo

BOARD: Zoning Board of Appeals

MEETING DATE: February 01, 2022 DATE PREPARED: January 18, 2022

AGENDA SUBJECT: Request for a variance from §1712 to install a front yard fence at 908 East Lake Street

RECOMMENDATION: Possible Action

APPLICANT: Tom Fochtman

PROPERTY OWNER: 908 MITTEN TIP LLC

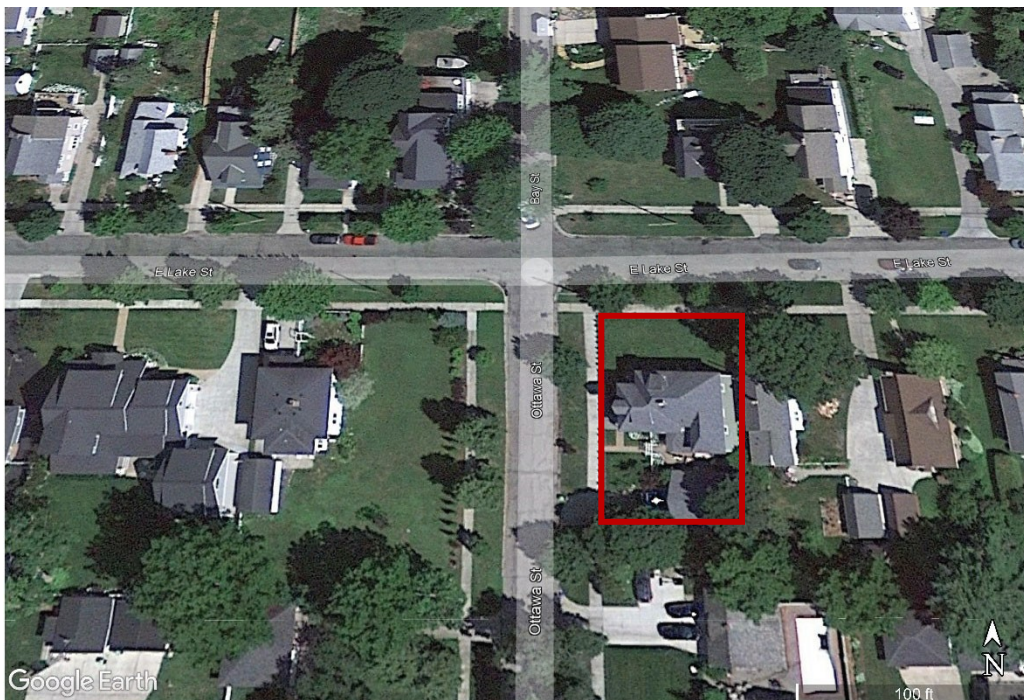
PARCEL ID: 52-19-05-126-052

REQUEST: Consider the Request

The Applicant is seeking a variance from § 1712; Fences to install a front yard fence along East Lake Street.

SITE

The subject property is located at the southeast corner of East Lake and Ottawa Streets. The property street address is 908 East Lake and the main entrance to the house and the garage is accessed from Ottawa Street. Separating the house and the garage is a small side yard patio with a decorative fence along Ottawa Street.





Subject Property: 908 East Lake Street Front Yard (this is the side façade of the home)

BACKGROUND DOCUMENTS

The following documents are included as part of the public record. This list may not be all-inclusive but does contain the bulk of materials submitted throughout the application process to date.

Document	Date
Zoning Board of Appeals Application	12-29-2021
Zoning Board of Appeals Variance Checklist	12-29-2021
Sketch illustrating the property and variance request	No Date
Photos submitted by Applicant	No Date

ZONING ORDINANCE PROVISIONS

The following provisions outlined in § 1712; Fences in the Zoning Ordinance influence the variance request.

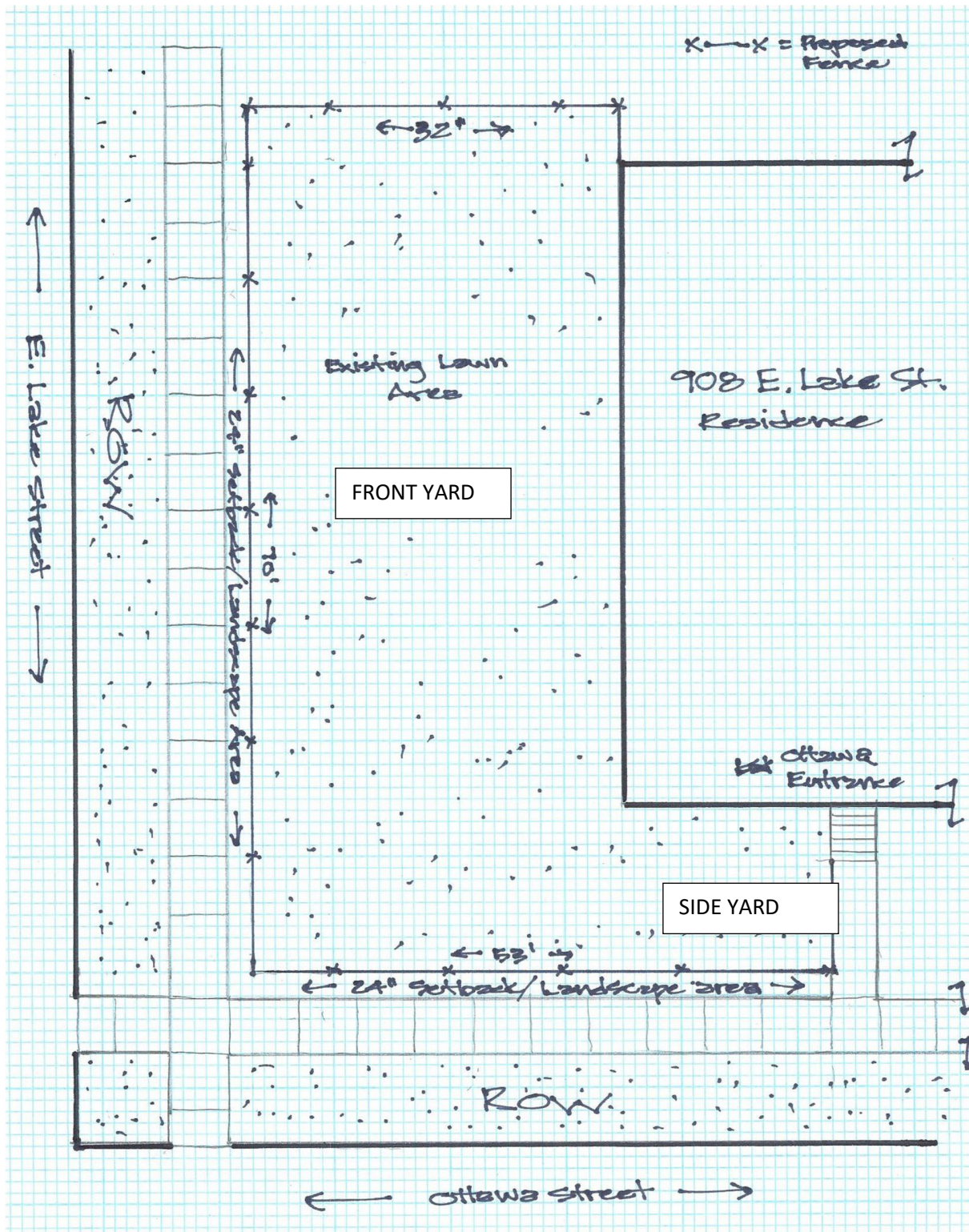
(1) Location (see Figure 1712).

- a. Corner-front yard. Only decorative and living fences are allowed within a corner-front yard with a minimum setback of two feet from the street-fronting property line.
(A neighborhood example is 818 East Lake which is on the opposite corner.)

(2) Height and design restrictions

- b. Corner-front yard decorative fences shall not exceed three and one-half feet (42 inches) in height and shall not obstruct vision to an extent greater than 50 percent of total area. (A neighborhood example is 818 East Lake which is on the opposite corner.)

PROPERTY OWNER ILLUSTRATION



NEIGHBORHOOD CONTEXT

The subject property is located within the East Mitchell Historic District. The central portion of the neighborhood runs along East Mitchell Street, where the residences tend to be larger and more elaborately detailed. East Mitchell runs westward and downhill into the central downtown area of Petoskey, and the East Mitchell Street Historic District lies on parallel streets both north and south of East Mitchell. Landscaping in the district includes a profusion of shade trees and shallow front lawns, sometimes banked behind low retaining walls. Despite physical alterations of many houses (in particular enclosing porches), the overall historic appearance of the district remains intact due to retention of important design elements, and collections of structures with high historic integrity.¹

There are several properties along Lake Street between Division Street and Williams Street which have fences.

618 East Lake Street – the front yard fence sits atop a berm approximately 10 feet from the interior side of the public sidewalk.



618 East Lake Street

619 East Lake Street – a side yard fence which extends beyond the building face that runs along the west property line. *No photo*

¹ Wortman, Julie A. (December 1985). ["National Register of Historic Places Inventory-Nomination Form: Historic Resources of Petoskey \(Partial Inventory: Historic and Architectural Properties\)"](#)

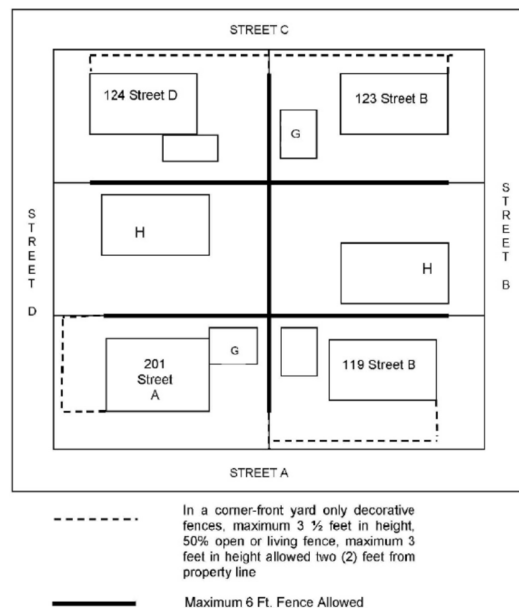
818 East Lake Street – a corner lot with a front yard decorative fence and living fence located across the street from the subject property.



818 East Lake Street

OBSERVATIONS

The Applicant was advised by the City if the address to the house were changed to Ottawa Street that the fence proposed for the front yard would then be allowed as a side yard fence. Figure 1712 in the zoning ordinance referencing “119 Street B” would apply if the address were changed to Ottawa Street. If the address were changed to Ottawa Street, this condition would still require, based on the Applicant’s request, to have a variance granted for the Ottawa Street front yard.



§ 2004. JURISDICTION

The Zoning Board of Appeals shall have the authority to grant non-use variances relating to the construction, structural changes or alterations of buildings or structures related to dimensional requirements of this zoning ordinance or any other nonuse-related standards in the ordinance. If there are "practical difficulties" for non-use variances the zoning board of appeals may grant a variance so that the spirit of this zoning ordinance is observed, public safety secured and substantial justice done. The Zoning Board of Appeals shall consider dimensional standards where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or practical difficulties to the owner of such property provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this ordinance.

ACTION

Action in making its motion, the Board shall state the grounds, or Findings of Fact upon which it justifies the granting of a variance and may attach any conditions regarding the location, character, and features of the request that further the purposes of the ordinance. In addition, a variance should only be granted after consideration of the following factors:

1. The need for the variance is due to unique circumstances, or physical conditions, of the property involved, such as exceptional narrowness, shallowness, shape or area, exceptional topographic conditions or other extraordinary or exceptional conditions of the specific piece of property and is not shared by neighboring properties;
2. The request is not due to the applicant's personal or economic situation;
3. The practical difficulty was not created by an action of the applicant;
4. The requested variance is the minimum variance necessary to grant substantial relief to the applicant while at the same time minimizing any adverse impacts to other property owners in the general neighborhood or zoning district;
5. The request, if granted, would not cause substantial detriment to the public good or substantially impair the intent and purpose of the ordinance; and
6. The strict application of the regulations would result in peculiar or exceptional practical difficulties.

#####



Zoning Board of Appeals Application

101 East Lake Street, Petoskey, Michigan 49770 • 231 347-2500 • 231 348-0350

Case # _____

Applicant Information

Name: Tom Fochtman

Address: 908 E. Lake Street

City: Petoskey

State: MI

ZIP Code: 49770

Phone: 303.947.1320

Email: tom@ceibass.com

Interest in property, if applicant is not owner:

Owner Information (if different than applicant)

Name: Tom Fochtman

Address: 10395 W. 74th Place

City: Arvada

State: CO

ZIP Code: 80005

Phone: 303.947.1320

Email: tom@ceibass.com

I am requesting a variance, appeal or reasonable accommodation from the requirements of the Zoning Ordinance and understand the importance of knowing exactly where my property lines are relative to all structures. I have been advised that the only way to know this information for certain if the property stakes cannot be found is to obtain a property survey. I am not required to obtain a survey to make application to the Zoning Board of Appeals, but understand that the Board may postpone action on my request until one is provided to ensure that all dimensional standards stated in my application are correct.

As the applicant, I state that all information provided herein is accurate to the best of my knowledge. I further authorize City of Petoskey staff and Board of Appeals members to enter upon the property for which a variance or special exception from the Zoning Ordinance is sought.

Signature: [Signature] Date: 12/29/21

Owner's Signature: _____ Date: _____
(required if the applicant is not the property owner)

Property Location

Address: 908 E. Lake Street

Zone:

Use: Residential home



City of Petoskey

Office of City Planner

101 East Lake Street, Petoskey, Michigan 49770 • 231 347-2500

SAMPLE

Zoning Board of Appeals Zoning Ordinance Regulation Variance Checklist

Date: 12/29/21

Case Number: _____

It is the applicant's responsibility to prove a practical difficulty. It is not the job of the ZBA to find the practical difficulty for the applicant.

Issue to be evaluated (Practical Difficulty)	Supports the variance	Does not support the variance	Notes
Will strict compliance with the dimensional requirements of the zoning ordinance prevent the applicant from using the property for the permitted purpose? - A variance is granted for circumstances unique to the PROPERTY, not those unique to the owner.	✓		Can't use the property as intended
Is there a way to accomplish the same purpose without a variance or with a lesser variance regardless of convenience or expense? - The ZBA considers the property, not issues with the interior of the structure.		✓	No
Is the need for the variance due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district? - If the situation is often repeated in the same zoning district, then the variance request should be denied.	✓		
If granted, will the variance uphold the spirit and intent of the ordinance and be fair to neighboring properties? - There are reasons the ordinance was adopted and those reasons should be respected and upheld.	✓		
Has the need for the variance been created through previous action of the applicant? - The Appeals Board is not responsible for "bailing out" and applicant who created the need for a variance.			No previous action taken

Property Information

	Code Required	Actual	Proposed
Lot Area	_____	_____	_____
Front Setback	_____	_____	_____
Side Setback	_____	_____	_____
Side Setback	_____	_____	_____
Rear Setback	_____	_____	_____
Building Height	_____	_____	_____
Other	_____	_____	_____

Type of Request

- ☒ Variance ☐ Administrative Review ☐ Temporary Use
☐ Exception of Special Approval ☐ Interpretation ☐ Appeal
☐ Fair Housing Reasonable Accommodation

Applicable Code Sections: _____

Specific Request: Allow a front yard fence

APPLICANT STATEMENT OF HARDSHIP OR EXCEPTIONAL PRACTICAL DIFFICULTY CREATED BY ZONING CODE REQUIREMENTS (REQUIRED FOR VARIANCE REQUESTS).

This statement must apply specifically to your property and address exceptional narrowness, shallowness, shape, area, topographic conditions or other extraordinary or exceptional conditions of the property (may be submitted on a separate sheet).

See typed explanation, attached

Required Submittal Materials

If an application is not complete upon submittal, it will be held until all required materials are provided. With this application form, please provide eight (8) hard copies and one electronic copy of the following:

- ☒ A Scaled Site Plan, including elevation(s) of structure (existing and proposed)
☒ Photographs of property

NOTE TO APPLICANT: A variance is valid for construction within 12 months of the approval date. If construction is not commenced within 12 months, the variance is no longer valid.

Please note that a public hearing notice will be posted on our property stating your request and the date, time and location of the Zoning Board of Appeals hearing.

For Office Use Only

Received By: _____ Date Received: _____

Filing Fee: _____ Date Paid: _____

January 4, 2022

RE: Request for a Zoning Variance

LOCATION: 908 E. Lake Street, Petoskey 49770

We are requesting a variance to allow for a front yard fence that would of course comply with the current Fence Regulations.

We purchased the house in March, 2021. The landscape that was installed was not compliant with the current Living fence reg's and we had them removed. They also did not adhere to the 24" setback and some had reached 6' tall. The prior situation was very much out of compliance with Sec. 1712. 3(d).

The reason for the variance request is to have a secure space for our two dogs and our grandkids. I'm working with Harbor Fence Company, Kent is fully aware of the regulations and what is allowed. 42" tall, 50% coverage, etc.

Our situation is unique. Our address is 908 E. Lake Street but you do not enter from Lake Street at all. The front door and a side entrance are both on Ottawa Street, as is the driveway and garage. I'm aware I can request a 'change of address' and have spoken to the appropriate person with City of Petoskey. But if I do change to Ottawa the fence design we are contemplating would include some front yard fencing along Ottawa. Whether we keep the Lake Street address or a new Ottawa address, we would still be requesting a variance.

If we leave the address 908 E. Lake Street we use the requested variance area as a side yard. Same if we change to an Ottawa address. We view and treat the area as a side yard, not a front yard.

I'm a Landscape Architect and would be installing very desirable landscaping in the 24" area between the requested fence area and sidewalk.

Thank you for your consideration with this matter.

Tom Fochtman
tom@ceibass.com
303 917 1320

X—X = Proposed Fence

← E. Lake Street →

ROW

Existing Lawn Area

908 E. Lake St.
Residence

← 24' setback/landscape area →

← 10' →

← 53' →
← 24' setback/landscape area →

Exit Ottawa
Entrance

ROW

← Ottawa Street →

Fence
House, terminates @ corner of house



Prior conditions









City of Petoskey

Office of City Planner

101 East Lake Street, Petoskey, Michigan 49770 • 231 347-2500

Zoning Board of Appeals Zoning Ordinance Regulation Variance Checklist

Date: February 1, 2022

Case Number: 863

It is the applicant's responsibility to prove a practical difficulty. It is not the job of the ZBA to find the practical difficulty for the applicant.

Issue to be evaluated (Practical Difficulty)	Supports the variance	Does not support the variance	Notes
Will strict compliance with the dimensional requirements of the zoning ordinance prevent the applicant from using the property for the permitted purpose? <ul style="list-style-type: none">- A variance is granted for circumstances unique to the PROPERTY, not those unique to the owner.			
Is there a way to accomplish the same purpose without a variance or with a lesser variance regardless of convenience or expense? <ul style="list-style-type: none">- The ZBA considers the property, not issues with the interior of the structure.			
Is the need for the variance due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district? <ul style="list-style-type: none">- If the situation is often repeated in the same zoning district, then the variance request should be denied.			
If granted, will the variance uphold the spirit and intent of the ordinance and be fair to neighboring properties? <ul style="list-style-type: none">- There are reasons the ordinance was adopted and those reasons should be respected and upheld.			
Has the need for the variance been created through previous action of the applicant? <ul style="list-style-type: none">- The Appeals Board is not responsible for "bailing out" an applicant who created the need for a variance.			



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MOTIONS BY THE ZONING BOARD OF APPEALS Variance Requests

In Case #863, I move to (*approve/ deny*) a **variance for a front yard fence at 908 East Lake Street** with the (conditions/modifications) of:

Based on the findings of fact in the (e.g. agenda memo, submittal materials, etc.) that

_____ and the comments provided by

(*e.g., those in attendance at the hearing, the applicant, the applicant's representative, etc.*), that demonstrate there is a (*practical difficulty/ lack of practical difficulty*) created by **Sections 1712** of the Zoning Ordinance and that the proposed changes (*are not/ are*) contrary to the intent of the ordinance and (*would not/ would*) cause substantial detriment to the public good or substantially impair the intent and purpose of the ordinance.
