



ZONING BOARD OF APPEALS

September 2, 2014

A regular meeting of the City of Petoskey Zoning Board of Appeals was conducted in the City Hall Community Room on Tuesday, September 2, 2014. Roll was called at 7:00 P.M.

Present: Michael Karr
Jim Knibbs
Noah Marshall-Rashid
Lori Pall
Clark Smith

Absent: Gary Lemieur
Norm Nasson, Alternate

Staff: Amy Tweeten

Also Present: John Thurman, 1109 Kalamazoo Ave.

Upon motion made and supported, the minutes of the August 5, 2014 Zoning Board of Appeals meeting was approved, with board member Knibbs abstaining.

Case #806 – A requested rear-yard variance to allow the construction of a second story deck at 322 W. Lake Street

Chairman Marshall-Rashid asked board members if they had any questions and then asked staff for an overview of the request. Staff explained that the house had been remodeled in 2006 and the building official had mistakenly included the deck in the building permit approval without zoning approval, which was explained in the letter from Dick Crawford, Building Official at the time. The first floor deck would have been allowed because it was low enough to not require a railing, but the second floor deck would need to meet the rear-yard setback.

Mr. Thurman would now like to construct the second story deck, which would require a 24 foot rear-yard variance from the allowable exception of a 3 foot encroachment into the rear yard.

Mr. Thurman explained that he had remodeled the house in 2006 as it was in very bad shape. He stated that he believed the purpose of setbacks is primarily for fire safety reasons and since there is simply a parking lot behind his property, there is not a safety concern.

Board chairman Marshall-Rashid asked Mr. Thurman to state his practical difficulty as the authority of the board is only to grant variances if a practical difficulty is shown.

Mr. Thurman stated that the size of the lot is non-conforming relative to the ordinance and that he thinks a deck would enhance the property, providing a view of the bay, as many other properties in the neighborhood are being improved.

At this time, chairman Marshall-Rashid went through the Zoning Ordinance Regulation Variance Standard checklist.

- Will strict compliance with the dimensional requirements of the zoning ordinance prevent the applicant from using the property for the permitted purpose?

Board members responded that the property was in the RM-2 Multiple Family Zoning District and could be used as a multiple family dwelling without the variance so the standard does not support the variance.

- Is there a way to accomplish the same purpose without a variance or with a lesser variance regardless of convenience or expense?

Board members discussed the dimensions needed for a deck. Board member Karr asked the applicant if he would consider a lesser deck and noted that while a full deck is typically 6-8 feet, there are also "Juliette porches" that only go out 2-3 feet but allow the openness to the outdoors. Mr. Thurman responded that he would want a deck to be a minimum of six feet to be useable.

Board chairman Marshall-Rashid noted that the board should perhaps be reading the standard in relation to whether a variance is warranted according to the first standard rather than the actual setback of the deck.

- 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?

Board member Knibbs noted that it was a small lot. Staff reminded the board that the information provided from a previous variance request showed that most lots on this block were small. Pall noted there were first floor decks on several adjoining lots and that they were smaller or similar sized lots.

- If granted, will the variance uphold the spirit and intent of the ordinance and be fair to neighboring properties?

Board member Karr noted that the property is within the RM-2 Zoning District that permits a certain degree of density. What he considers is that a variance goes with the property, so while the requested setback variance is only for a deck at this time, if granted, a future owner could use the expanded footprint to add on to the building, increasing mass and density of the lot which would go against the intent of the ordinance.

Board member Pall also noted that while it is true that there is currently a parking lot behind this property, the land could be developed at some time in the future blocking the view of the deck and decreasing the open space of the block.

- Has the need for the variance been created through previous action of the applicant?

Board member Knibbs asked Mr. Thurman about the remodel in 2006 and whether he had included the deck in the permit. Mr. Thurman stated that he knew at the time of the remodel that a variance would be needed for a second story deck.

In an effort to understand the status of construction at the time of the May 26th 2006 letter, Board member Karr asked if there was record of when the Certificate of Occupancy was issued. After receiving notice from Emmet County it would have been Board member Karr's expectation that the sliding door would have been replaced by a window in order to avoid any type of fall hazard. Mr. Thurman did not know the timing of the occupancy permit or the status of construction at the time of the May 26th 2014 letter. Board member Knibbs noted that a wood guardrail appears to have been installed at the existing sliding door which would satisfy the building code requirement.

At this time, board member Marshall-Rashid asked for a motion to be made and noted that a motion for approval must state the determined practical difficulty.

Board member Karr made a motion to deny the variance request at 322 W. Lake based on the finding of facts stated by Mr. Thurman that indicate a lack of a practical difficulty with the property; support for the motion was by board member Pall. Motion carried 4-1, with board member Knibbs voting no.

Mr. Thurman asked whether a lesser deck would be approved. Board chairman Marshall-Rashid responded that the question would have to be discussed with staff as the board had taken action. Staff noted that as action had been taken, a new variance request would be required. Board member Karr noted that he had asked the question of a lesser deck, but that Mr. Thurman had said he would want a 6-8' deck which Mr. Karr believed did not meet the standard to grant a variance.

Seeing no further business, the meeting was then adjourned at 7:28 p.m.