



ZONING BOARD OF APPEALS

July 7, 2015

A regular meeting of the City of Petoskey Zoning Board of Appeals was conducted in the City Hall Community Room on Tuesday, July 7, 2015. Roll was called at 7:00 P.M..

Present: Noah Marshall-Rashid, Chair
Michael Karr
Jim Knibbs
Gary Lemieur
Lori Pall
Clark Smith

Absent: Norm Nasson, Alternate

Staff: Amy Tweeten

Also Present: John Plichta, 8450 Channel Road
John and Pam Yell, 416 Liberty Street
Rick Neumann 1540 Bear Creek Lane, Apt A

Upon motion made and supported, the minutes of the May 5, 2015 Zoning Board of Appeals meeting were approved.

**Case #809 A variance request to allow two units
in an existing structure at 415 Liberty Street**

Staff summarized the request, that it had previously been a multi-unit building but that pursuant to Section 1702(3)(c), the non-conforming status as multiple family had been lost so to have two units, a variance on the lot area required would be needed.

John Plichta, owner's representative, noted that the old Sanborn Maps show this structure on a lot with a carriage house, but at some point, the back half with the carriage house and where there is now another residential structure, was divided off. He noted that 30% of the buildings around this structure were something other than single family. For this reason, as well as the lack of yard and parking, in the applicant's opinion it is not conducive to single family residential. Mr. Plichta stated the building is structurally sound and he would like to resurrect it rather than have it demolished and have a vacant lot that would likely not be built upon. To summarize the practical difficulty of why they are requesting two units, it is the lot size, the evolution of the property and the lack of parking. He would purchase the building if the variance approved.

John Yell, 416 Liberty, asked about where the parking would be located and stated he had no objection to the request.

Board member Lemieur asked about the proposed parking pad and how it would impact on-street parking. Mr. Plichta responded he would add two off street parking spaces but one existing on street space would be lost. The net result would be one additional parking space.

Board member Karr asked staff about parking requirements for two units. Staff responded that the ordinance requires two spaces per unit for a total of four parking spaces but noted there is currently no on-site parking.

Board chairman Marshall-Rashid asked about the variance in the RM-2, staff responded that the district density requirements require a lot of a certain size per dwelling unit, with two units requiring 7,000 square feet and this lot only 3,875 square feet. Marshall Rashid then summarized the issue as a multi-unit structure on a small lot. He then noted the letters received, one in support of the request and two opposed.

Mr. Plichta commented that the community needs rentals and lower cost housing and he felt that allowing this structure to be rehabbed into two units would help the community.

Board chairman Marshall Rashid responded that while he agreed with Mr. Plichta, the ZBA plays a judicial role, not a legislative role and has standards that must be applied to the property.

Rick Neumann, 1540 Bear Creek Lane, Apt A, spoke in support of the request, noting that the use of the building for two units would match what exists and benefit the neighborhood, whereas if the structure is not viable to rehab as a single unit it would be torn down, losing an historic structure and creating a vacant lot that would likely never be rebuilt upon.

At this time, the chairman closed public comment and opened for board deliberation.

Board member Pall commented that even as a single family home the lot is non-conforming.

Board member Karr applauded the efforts, but had concerns that the case is about aesthetics and financial challenges when the board's role is to deal with practical difficulties of the property. He felt the lot was undersized for the proposed use.

Board members then went through the variance checklist

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

Board member Knibbs felt that the first standard was met as the property had been multiple family and is in a multiple family district.

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

Board members agreed that the standard supported the request.

3. 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 Pall noted that it was on a non-conforming lot even for single family; Smith concurred. Marshall Rashid did not believe it was a unique lot.

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

Board member Karr read comments from a neighbor who is improving his property and taking a multi-unit structure to a single family. He noted that the opinions of the neighbors matter, and while he agreed the renovation as a single family dwelling may not be as economically viable for a developer he questioned the assertion presented by the applicant regarding the desirability of a single family home in the existing neighborhood.

Board chairman Marshall-Rashid wondered if someone would buy and renovate for ownership. He noted that the intent of the ordinance is to eliminate non-conforming situations and he thought the intent of planners at time of ordinance adoption was to have a structure like this to be returned to single family. Staff noted that the property is within a multiple family district.

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

Discussion occurred on the timing of loss of non-conforming status. Staff explained that the property had been vacant for well over a year, and had been cited under three different owners over the past five years. Mr. Plichta noted the confusion between what the building department needed versus what was required for improvements under the International Property Maintenance Code citation. He showed that his building permit was for 1 and 2 Family Residential, that it had been multiple family so they had assumed they could use it for this use. Staff explained that it is a building code designation, not a zoning classification.

Board member Karr noted that the code violations and lack of occupancy or the financial investment required to remedy the IPMC violations should not have been a surprise when the property was purchased.

Board chairman Marshall Rashid then read the stated practical difficulty of the applicant and the recommended condition of approval if approval were the motion.

The stated practical difficulty for the variance request is that the lack of a back yard and parking, as well as commercial uses surrounding the property, make the structure undesirable for single family housing.

Board member Pall noted her disappointment in the stated practical difficulty, and that while the project sounds good, she did not think it met the required standards for a variance to be granted. She then made a motion to deny the variance request based on the finding that the stated practical difficulty does not meet the fact finding standards for a variance. Support for the motion was by board member Karr.

Upon roll call vote, the motion carried 4-2, with members Lemieur and Knibbs voting against the motion. The variance request was denied.

Marshall Rashid then noted that he felt there was only a legislative solution to the issue. Board members then discussed the difference between a hardship and practical difficulty, to which staff explained hardship is the standard to be met for a use variance, which this was not because it was a permitted use in the RM-2 District. The ordinance text was read.

Updates

No updates were provided.

The meeting adjourned at 8:17 p.m.

Minutes reviewed by Michael Karr, Secretary.