



ZONING BOARD OF APPEALS

February 2, 2016

A regular meeting of the City of Petoskey Zoning Board of Appeals was conducted in the City Hall Kilborn Room on Tuesday, February 2, 2016. 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: Bob and Pam Washburne, 621 E Mitchell Street

Upon motion and support, the minutes of the September 1, 2015 and January 5, 2016 meetings were approved.

**Case #812 A Side-yard Setback Variance
Request at 613 E. Mitchell Street**

Board Member Karr noted that he had received a hearing notice as he lives within 300 feet of the subject property, but did not feel he had a conflict of interest as he does not know the owner and is not affected by the request. Board Member Pall also received a notice and also did not believe she had a conflict. The Board determined that neither member had a conflict and could thus hear and vote on the case.

As no applicant was present, staff provided an overview of the request: a two foot variance to allow construction of an attached garage within 3 feet of the east property line. The Board Members had received the applicant's statements of practical difficulty.

At this time, Chairman Marshall-Rashid called on Bob and Pam Washburn, 621 E. Mitchell Street. The Washburn's had concerns that the proposed garage would be a large wall that would block their view, specifically from their patio. They also had a concern with the closeness of the garage as there is an existing retaining wall of concrete and sand, and that the construction within 3 feet of the lot line would negatively impact the stability of the wall.

Discussion then returned to the Board. The Chairman noted the request was for a 2 foot variance to allow the garage to be constructed 3 feet from the property line.

Board Member Karr noted inconsistencies with the plans presented – one site plan showed the garage proposed at 3 feet from the property line and the other at 1’10” and one plan shows a ramp and one shows stairs. He would have asked the applicant for clarification if he were in attendance. He also noted that there appeared to be ways to design the garage without a variance and therefore did not see a practical difficulty.

Chairman Marshall-Rashid and Board Member Smith both commented on the ability to construct an attached garage without a variance, that the request was not the minimum required to achieve the desired results, and that there were door designs and sizes that could be made to fit.

Board Member Knibbs noted that there are two garages on the property currently but neither is shown on the site plan. He questioned whether one or both of the existing garages were intended to be removed as part of this project. Staff believed the existing garage on the northeast corner was intended to be removed, however there was no representative from the applicant to confirm the intent.

Marshall-Rashid suggested the Board go through the variance checklist to determine whether a variance is warranted due to practical difficulties.

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

The house has been inhabited for many years with the existing two garages. Board members felt that there were lots of options to accomplish the desire of the property owner to have a garage – either attached or detached – and still meet the ordinance standard. There is sufficient space in the northeast corner of the property to have a garage.

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

Same discussion as #1 – there could be a useable, attached garage at the northeast corner of the house constructed within 5 feet of the east property line.

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?

The situation is not unique as there are many houses without a garage and this property does have two garages already.

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

Given the grade and retaining wall concern raised by the neighbor, granting a two-foot variance could negatively impact adjacent property.

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

There was discussion whether the need is created through an action of the applicant simply by the request as the property does have two garages and the ability to construct a new garage without a variance. As there were no previous variances or additions that have put the property in a position of requiring a variance, the consensus was that the applicant has not taken an action to create the variance need.

The Chairman then asked for a motion to be made.

Board Member Pall made a motion, with support from Board Member Smith, that the two (2) foot side-yard variance to allow an attached garage three (3) feet from the property line be denied as a practical difficulty had not been shown based on the findings that the ordinance does not prevent use of the property for the permitted purposes, that the owners could achieve the same purpose without a variance, and that as presented the variance request would have negative impact on the neighboring property.

Upon roll-call vote, the motion carried 6-0. The variance request was denied.

Updates

Staff informed the Board of an upcoming training for Zoning Board of Appeals in Gaylord on March 10. All Board Members except for Pall and Karr have been to this training. Chairman Marshall-Rashid asked for information to be sent as it would not hurt to another training.

Staff reviewed the letters sent to applicant's whose variances had lapsed due to lack of construction progress.

Chairman Marshall-Rashid then asked about attendance of the City Attorney and why discussion of the January meeting was not on the agenda. Staff had contacted the attorney who said he was not planning to attend the meeting although Marshall-Rashid believed that in the City Attorney's absence the City Manager had agreed to attend. In regards to the January meeting staff provided background on her interactions with the applicant making the appeal. Marshall-Rashid believed staff had acted inappropriately and asked to have the issue of the role of the zoning administrator in variances and appeals cases on the next agenda.