



**ZONING BOARD OF APPEALS**

May 3, 2016

A regular meeting of the City of Petoskey Zoning Board of Appeals was conducted in the City Hall Community Room on Tuesday, May 3, 2016. Roll was called at 7:00 P.M.

Present: Noah Marshall-Rashid, Chairman  
Ben Crockett  
Michael Karr  
Jim Knibbs  
Lori Pall  
Clark Smith

Absent: Norm Nasson

Staff: Amy Tweeten

Also Present: Laurel & Eric Otto, 122 E Sheridan  
Joe VanKalker 103 E Sheridan  
Uli Rabeiro, 512 Michigan Street  
Dale Hull, 1180 Winnell Ct  
John Fought, 1112 Kalamazoo  
Max Bunker, 1109 Valley View  
Kelli Hagan, 1172 Winnell Ct  
Bob Cleland, 1125 Valley View  
Gary Greenwell, 1048 Emmet

Upon motion and support, the minutes of the February 2, 2016 meeting were approved.

**Case #814 A Front Yard Setback**  
**Variance Request 1160 Winnell Court**

Chairman Marshall-Rashid asked staff to provide an overview of the case. Staff summarized the variance request and the recent update to the front yard setback requirements within the R-2 zoning district. Staff also noted the additional information provided including the plat of the subdivision and photos submitted by the applicant. Staff noted that the 100' lot depth indicated within the agenda memo was based on GIS measurements, but according to the plat, the lot is even shallower than initially thought being 85 feet deep in the middle. In addition to the estimated 40' required setback, per the new ordinance, there is also a required 35 foot rear-yard setback in the R-2 Zoning District. This results in a buildable depth of only 10' and pursuant to Section 401 of the Zoning Ordinance, the minimum width and depth of a house in the single family districts is 24' x 24'.

The applicant was then asked to provide his case. Mr. Rabeiro stated that he had planned to build on the lot when he initially purchased the property but due to personal circumstances and the

economy, he had not. When he bought the lot the zoning ordinance required a 25 foot front yard setback, which was challenging enough given the lot shape, but with the new code requirement, it is essentially non-buildable. He only wants to go back to what the code allowed when he purchased the lot, a 25 foot front yard setback.

At this time, the chairman opened the meeting to public comment.

John Fought, 1112 Kalamazoo Avenue noted that the existing houses on the court are setback more than 25 feet, so allowing 25 feet would ruin the symmetry of the court. He questioned whether with a 25 foot wide house could meet the deed restrictions of 1000 square feet and how the setbacks were measured. He asked the board, if they voted to approve the request, to put stipulations on that no trees be removed or trimmed.

Dale Hull, 1180 Winnell Court stated that when Mr. Rabeiro purchased the lot, it was buildable and the code change made it unbuildable. Given that the recent updates to the zoning ordinance created an unbuildable lot Mr. Hull suggested the City should purchase the property from Mr. Rabeiro to compensate him for his financial loss.

Bob Cleland, 1125 Valley View, asked about the trees and whether they were on the property line and if so, how was their trimming or removal handled.

Kelly Hagan, 1172 Winnell Ct, recently purchased her home and was told by the realtor that the adjacent lot was buildable and then made non-buildable by a code change. She had contacted the owner and made a low-ball offer of \$32,000 but was told there was a bidding war on the lot. She liked the idea of the City buying the lot and keeping it open space because she likes the cul de sac openness. She is against moving the house closer to the front but not against the owner being able to build.

Max Bunker, 1109 Valley View, agreed with the tree issue as they were an important buffer between neighbors. He asked whether an easement existed for the power poles on the west edge of the property. Board member Karr noted that typically utility easements are identified on a survey and that nothing regarding an easement is noted on the professional survey included within the application.

Staff responded that the City does not enforce deed restrictions on house size, that issues of landscaping had to be resolved between property owners and that she did not know whether or not an electric easement existed.

The discussion was then brought back to the board for deliberation, which began with a review of the six factors stated in the Zoning Ordinance to be considered.

- 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.

The consensus of the Board was that triangular shape of the lot on a circle was unique. Board members also noted that other lots in the plat had been combined which allowed for deeper front yard setbacks and the shallowness of the lot was unique.

- 2) The request is not due to the applicant's personal or economic situation;

The consensus of the Board was that any owner would be faced with the same challenge.

- 3) The practical difficulty was not created by an action of the applicant

The consensus of the Board was that the difficulty was created by a change in the zoning ordinance as the lot had been buildable before the change.

- 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.

Given the 85 foot lot depth and required 35 foot rear-yard setback, the minimum variance would be for a 26 foot setback. However, staff agreed that returning to the 25' setback requirement from the prior ordinance seemed to be a reasonable request.

- 5) The request, if granted, would not cause substantial detriment to the public good or substantially impair the intent and purpose of the ordinance.

Board member Pall asked staff to clarify the reason for the recent ordinance change. Staff explained that there are many houses in town that pre-date the ordinance and have a less than 25 foot front-yard setback, so the concern was that in-fill construction may not be compatible with existing houses. The intent was to allow new houses to use an average of existing house front-yard setbacks within 150 feet in one direction, which in most cases reduces the required front yard set back from the original 25' front yard requirement. The intent of the change was to help existing platted properties by being less restrictive with the front yard setback requirement.

Consensus of the Board was that the lot was created to be built upon, had a 25 foot front yard setback up until 2015 so the request would not impair the intent and purpose of the ordinance.

- 6) The strict application of the regulations would result in peculiar or exceptional practical difficulties.

Board members believed it would.

The Board then went through the checklist to determine whether a practical difficulty exists.

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

Board members agreed that strict compliance would prevent the property from being built upon for a single family home.

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 believed a 25 foot setback was reasonable. Although a 26 foot front-yard setback would be the minimum required it would be more harmful to the trees at the rear of the lot that the neighbors want protected.

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 members believed the property was unique as there are no other shallow (85' deep), triangular platted lots at the end of a cul-de-sac next to combined platted lots.

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

Board members felt that as it was a platted lot intended for building and that there were other provisions of the ordinance that had to be met to maintain neighborhood compatibility such as lot coverage, a variance to allow a 25' front yard setback met this criteria.

5. Has the need for the variance been created through previous action of the applicant?  
The need was not created by the applicant, but by a change in the zoning ordinance.

Additional input from the audience was then requested.

Mr. Fought asked how setbacks were measured and how deed restrictions were enforced. Staff responded that the City does not enforce deed restrictions.

Mr. Rabeiro stated he understood the purpose of the ordinance change and thought it helped many properties but impeded his property.

A motion was then made by Board Member Knibbs, with support by Board Member Karr, to approve the variance request to allow a 25 foot front-yard setback based on the findings of fact in the agenda memo, information provided at the meeting, and public comment that to hold the property to the current front-yard setback standard would render the lot unbuildable based on the practical difficulty of a 85' deep platted lot on a curve that also requires a 35 rear-yard setback. Upon a roll-call vote, the motion carried 6-0.

### **Case #815 A Front Yard Setback Variance Request, 1117**

Staff gave an overview of the request to allow a partially constructed loading dock to remain. Comments were then requested by the applicant and the public.

Joe VanKalker apologized for starting the dock loading area without approval, he had been trying to get materials inside for winter. The purpose of the dock is to have shipping and receiving at the north end of the building where materials are kept as the current dock is at the south end. The dock would also allow trucks to load more parallel to the building rather than perpendicular, which blocks Buckley Avenue.

Laurel Otto, 122 E Sheridan voiced her concern with trucks blocking Buckley Avenue and wanted to know if the dock would improve the situation. Board member Knibbs shared a site plan graphic with the audience which showed the intent of the new loading dock design and its impact to Buckley Avenue.

The board then discussed the matter noting that the property was zoned I-1 Light Industrial; that the dock was partially constructed; and that part of the challenge is that part of the building is being leased to others. Board members asked whether consideration had been made to moving all loading docks to north end of building; whether a non-covered loading dock was possible although not as desirable; whether the intent was to remove the loading docks at the south end.

Mr. VanKalker walked the board through the site plan, noting the error of calling the middle area a loading dock that is simply an area with overhead doors. Board Member Karr noted that a compromise may need to be temporary loss of one overhead door during loading to have the trucks parallel to the building which would limit the trucks projection into Buckley Avenue.

Gary Greenwell stated that that due to an addition to the building in 1979, there was no other way to have loading and get the trucks off the road. The angle of the loading dock was intentional for this purpose.

The Board then reviewed the factors for granting of a variance.

- 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.

Board members discussed whether the building close to the setback line made the situation unique and whether it was the use or the property that was unique.

- 2) The request is not due to the applicant's personal or economic situation

Discussion was that the request was due to the location of the original truck docks and closeness to the road right-of-way.

- 3) The practical difficulty was not created by an action of the applicant.

Discussion of the practical difficulty unique to the property being the need for a loading dock but the closeness of the building to Buckley Avenue created an unsafe situation for vehicles and pedestrians.

- 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.

Board members felt variance minimum needed, but would want assurances that the old loading dock at the south end would be removed.

- 5) The request, if granted, would not cause substantial detriment to the public good or substantially impair the intent and purpose of the ordinance.

Board Member Crockett asked how the I1 setback compared to residential setbacks. Staff explained that the setback was larger due to the increased height of buildings. It was noted that if conditions were put on approval, detriment could be lessened.

- 6) The strict application of the regulations would result in peculiar or exceptional practical difficulties.

There was discussion whether the issue was a logistical challenge of the owner and not the property or whether the request could be an improvement of an existing situation with a problematic loading dock.

The Board then went through the checklist.

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

There was not consensus on this point, as some did not feel the property had a unique circumstance with the building built at the front-yard setback. The board also discussed the use of the building and whether a loading dock was an essential feature of such a building or whether a loading dock could be omitted.

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

There was not consensus on this point, as part of the problem was with the inside of the building, which could be altered.

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?

There was some agreement that the property was unique.

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

Board members stated that with conditions, the new loading dock could be an improvement for operation of Buckley Avenue.

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

Board members did not feel the applicant created the need for the variance as the loading docks already existed. They appreciated that work had stopped when Mr. VanKalker was notified of a problem.

Public comment was reopened.

Eric Otto, 122 E Sheridan stated that there are often trucks in the street unloading or parking, making vehicles and pedestrians have to go off the road to get around. It is a real problem.

Mr. VanKalker noted that to functionally use the building, anyone would need a loading dock and he believes his solution is the only viable option and it cleans up an eyesore.

Board Member Karr then made a motion, with support from Board Member Knibbs, to approve a 12' foot front yard setback variance based on the findings of fact in the submitted materials, the comments provided by those in attendance, the applicant and the board discussion for a 12' x 14' loading dock with the conditions that the existing loading dock well on the southwest corner of the building is removed including the concrete site walls and steel guardrail. The motion to approve the variance request is based on the practical difficulty of an existing loading dock which results in trucks projecting into Buckley Avenue, the necessity to have a loading dock for this function and the opinion that the proposed loading dock would mitigate the issue of trucks restricting vehicles and pedestrians on Buckley Avenue. The motion carried 6-0.

### **Old Business**

Board members discussed the training attended and reviewed their concerns with the actions of the zoning administrator in variance and appeals cases. The recent appeal case regarding the Whitecaps restaurant proposal was discussed as an example where the process could be improved. There was discussion regarding the unintended complications which may be the result of the City Planner also being the Zoning Administrator. The Board felt that occasionally conflicts may arise as the result of conflicting responsibilities between the two positions. The pure enforcement nature of the Zoning

Administrator's role is occasionally at odds with the City Planner's role of encouraging, and finding paths for new developments to proceed. Chairman Marshall-Rashid and Board member Pall encouraged more transparency in the situation where the dual role creates potential conflict or where staff's opinion as the City Planner may be different from the position they are required to take as the Zoning Administrator.

Seeing no further business, the meeting was adjourned at 9:30 p.m.