



**ZONING BOARD OF APPEALS**

November 1, 2016

A regular meeting of the City of Petoskey Zoning Board of Appeals was conducted in the City Hall Community Room on Tuesday, November 1, 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: Jennifer and Jerry Hebert, 3359 Vineyard Court

Upon motion and support, the minutes of the September 6<sup>th</sup> meeting were approved.

**Case #817 A Requested Front-Yard Setback Variance**

**For 929 E Lake Street**

Staff gave background on the case, including creation of the lot and ordinance amendments that made the front yard setback variance necessary. Staff also provided additional front yard setback measurements for the neighboring properties which had been requested by the Board prior to the meeting. She also provided the Board with the most recently adopted amendment to the Zoning Ordinance Section 1704 which addresses maximum allowable paved surfaces within a residential front yard. She explained that the plan for 929 E. Lake street was currently showing a front-yard parking area of more than 40% which would exceed the maximum allowable and would require an additional variance.

Chairman Marshall-Rashid noted that in addition to the front yard setback there appeared to be other features of the proposed layout for 929 E. Lake which would also require a variance in order to proceed as designed. After much discussion, and concerns raised that a decision on setback might put the Board in a position to approve a follow-up variance request as the issues were inter-related, the Board determined that they would only address the front-yard setback variance request as the issue of front-yard parking coverage had not been included in the notification for

the meeting. Chairman Marshall-Rashid emphasized that a decision on the front yard setback variance would in no way grant relief from other non compliant portions of the current design and that an additional meeting, following public notice, would be required to consider any additional variance requests. Chairman Marshall-Rashid provided the applicant the option of proceeding with the hearing only related to the front yard setback or to defer the meeting to a later date where all variance requests could be reviewed in their entirety.

The applicant did not wish the hearing to be postponed, and asked for the Board to continue with the hearing on a front-yard setback variance request.

The applicant was then asked to present the variance request. Ms. Hebert then summarized the statement of practical difficulty by reviewing her responses to the dimensional variance checklist. She believes that: the situation is unique, as there is a single house at 915 E. Lake with a long front yard setback that is creating the need for a variance. She believes the variance, if granted would uphold the intent of the ordinance by keeping with the existing look of the neighborhood; the variance is necessary to build a modest home on the lot that has a drop off in the back; and they have not created the need for the variance. She believes that the house at 915 E. Lake with the large setback will one day be torn down and reconstructed toward the front of the lot. Her stated practical difficulties that create the need for the variance are the one house to the west with a large setback (915 E Lake) and the drop-off at the back of the lot. The applicant commented that given the location of the sidewalk away from the property line, an 11 foot setback felt larger.

Discussion was then taken back to the Board.

Given that the current ordinance allows for a front yard setback based on the average of existing front yard setbacks, board member Karr asked for clarification on the setback of 915 E Lake. The memo provided to the board indicated a 150' setback whereas the site plan provided by the applicant indicated 117'. The applicant stated their Architect, Nick White Associates, had confirmed the 117' front setback dimension for 915 Lake Street. Board members reviewed Google Earth satellite images and confirmed that the 117' dimension appeared accurate. He also asked staff about the properties on Kalamazoo Avenue and whether they should be included within the average given that his measurement had the two houses at 307 and 311 Kalamazoo within 150 feet of the subject property.

The Board discussed the ordinance language of averaging within 150 and felt it was not clear whether only one direction could be used or both directions could be used, that the text did not match the illustration, and that the Planning Commission should review the language. All members agreed that the intent of the ordinance was to follow the neighborhood character.

Board member Pall and Board member Knibbs noted that the majority of the homes on the North side of Lake between Ottawa and Kalamazoo have fairly minimal front yards and that the requested front yard setback of 11' would not seem out of character with the immediate neighborhood.

There was then discussion on which properties should be included within the calculation for the required front yard setback. In order to best represent the character of the neighborhood and adjacent properties. The board considered and performed calculations on the following scenarios:

- All homes on Lake (East of Ottawa) and the two homes on Kalamazoo
- All homes on Lake (East of Ottawa)
- All homes on Lake within 150'

The Board agreed that respecting the 150' distance cited within the ordinance and not expanding the reach of the sample set would be the most prudent decision.

915 E. Lake Street Front Yard Setback	117'
917 E. Lake Street Front Yard Setback	12'
927 E. Lake Street Front Yard Setback	11'
<b>Average Front Yard Setback</b>	<b>46'-6"</b>

However, the board agreed that the 117' front yard setback at 915 E. Lake Street was an outlier, inconsistent with the majority of the neighborhood and that it was reasonable to exclude it from the required front yard calculations. Thereby resulting in a 35'-0" reduction from the required front yard setback.

**Average Front Yard Setback (with 915 E. Lake Excluded)      11'-6"**

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 believed that strict compliance was not possible with the neighboring property at a 117 foot front-yard setback. The 46'-6" front yard setback in addition to the steep topography on the North portion of the site would greatly restrict the ability to develop the site.

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 that an 11.5 foot setback was appropriate and as close as possible to meeting the intent of the ordinance.

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?

Yes, again the outlier setback at 915 E. Lake of 117 feet is unique.

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

Board members felt the request did uphold the spirit and intent of the ordinance and was fair to neighboring properties by removing the property that had an incompatible setback from the average setback calculation.

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

The Board agreed the situation had not been created by the applicant.

At this time, Chairman Marshall-Rashid requested a motion to be made.

Board Member Crockett made a motion, with support by Board Member Knibbs, to approve a front-yard setback variance in Case #817 for 929 E. Lake Street of 35 feet based on the finding of fact that there is a house within 150 feet that creates a practical difficulty as it has an atypical setback for the neighborhood at 117 feet, and that averaging the setbacks of the two properties closest to 929, resulting in an allowable 11 foot 6 inch front-yard setback, would sufficiently maintain the neighborhood character.

Upon roll-call vote, the motion carried 6-0.

The applicants thanked the Board and commended them on their due diligence.

### **Updates**

Staff updated the board on the Zoning Ordinance updates to 1704 provided, noting there may need to be standards added for review of variance cases dealing with parking requirements and curb cut allowances.

Seeing no further business, the meeting was adjourned at 8:30 p.m.

Minutes reviewed and approved by Michael Karr, Board Secretary.