



**ZONING BOARD OF APPEALS**

May 2, 2017

A regular meeting of the City of Petoskey Zoning Board of Appeals was conducted in the City Hall Community Room on Tuesday, May 2, 2017. Roll was called at 7:00 P.M.

Present: Noah Marshall-Rashid, Chairman  
Mary Clinton  
Ben Crockett  
Michael Karr  
Scott Morrison  
Lori Pall

Absent: Jim Knibbs

Staff: Amy Tweeten

Also Present: Al Gruler, 125 Fulton Street  
Blain Gibson, 1008 Franklin Street  
Bart and Jay Wangeman, 522 Liberty Street  
Kelly Carson, 58 Bridge Street  
Darlene Schwartzfisher, 58 Bridge Street  
Dorothy Mills, 318 Fulton Street

Upon motion and support, the minutes of the November 1, 2016 meeting were approved with corrections to page 3. Board member Crockett then moved to place the board elections after the two cases. Support for the motion was by Board Member Pall and the motion passed 6-0.

**Case #818 A temporary use renewal request  
for a farmers market at 900 Emmet Street**

Staff summarized the request for a weekly market to include up to four food trucks each week, as well as a requested food truck rally in September.

Board Member Clinton asked about the orientation of trucks for the rally, to which Dorothy Mills replied they would likely be in the same general location as during the market.

Board Members Karr and Marshall Rashid raised concerns with the market being held during road construction and whether the approved start date should be once construction is complete, noting item #3 in the review considerations for a temporary use. Staff believed the work from Washington to Fulton was anticipated to be complete early to mid-June, but the Emmet Street construction

would be on-going all summer. Board member Clinton believed that the construction would likely discourage traffic to the area, lessening the safety concern.

Board Member Crockett asked how the use could become permanent, to avoid an annual renewal. Staff replied that if a permanent structure were put up and the market was a more regular occurrence, it could be approved as a permitted commercial use in the district. Her understanding was that the property was being allowed to be used as a market pending future construction.

Board Member Crockett then moved that the temporary use be approved as proposed. Support for the motion was by Clinton and the motion carried 6-0.

**Case #819 A variance request to allow reconstruction  
of an existing building at 1008 Franklin Street**

Staff gave an overview of the request by Gibson Excavating which would be a 46 foot front-yard variance (east property line), and a 12 foot side-yard setback (north property line). The property is accessed via a 25 foot access easement along the east property line and is surrounded on three sides by City parkland. Because the parkland is zoned R-1 Single Family Residential, the applicant is also seeking a variance from the requirement to construct a 6 foot masonry wall along the property line so that they can continue to access the property behind the building. The new building would be shortened at the south end where a detention basin would be placed.

Bart Wangeman, Wangeman Construction, noted the age of the structure to be likely 1940s construction with bow-string trusses that cannot be replicated. They believe the new building improves the site by bringing the building into compliance with the south side-yard setback and bring the building onto the property on the east side where it currently encroaches into the access easement. On the north side, they are keeping a newer portion of the existing building, with the wall of the new building meeting the 30 foot setback. The relief from the wall requirement is requested because Gibson's, as well as other property owners, use this property as access, and a wall would impede the business, drainage, and emergency vehicle access to the rear of the property.

Mr. Wangeman reviewed the unique aspects of the property in an old industrial area surrounded on three sides by city-owned property, it does not front a street, it has an access easement on the east, and there are topography challenges to the west. He believed the request was within the spirit of the ordinance by reducing the building area by 20% and managing the site storm water that currently is un-managed and keeping a business in the city.

Staff provided an orientation to the site and general area, showing the city parkland, areas zoned residential and those zoned industrial. She noted that there are several encroachment on the city property by adjacent property owners and that the area adjacent to Gibson's shows in the current Bear River Valley Recreation Area plan as a parking lot. This area had not received a lot of attention, but there may be more focus during the master plan update.

At this time, Chairman Marshall-Rashid asked for comments from those in attendance.

Kelly Carson, 58 Bridge Street, asked what was happening to the back of the building and thought the request was fine.

Al Gruler, 125 Fulton, asked about zoning of this property compared to his property. Staff responded that this is zoned I2 General Industrial and Mr. Gruler's properties were all in the B-2B Mixed Use Corridor.

Board Member Karr asked Mr. Gibson about the number of employees (6 employees, up to 10 anticipated) related to the parking spaces shown and stated that the site was very complicated and he was unclear what the board's role was and wanted it clarified.

Staff explained that the plan is going through the site plan approval process concurrently with the variance request. That is, the plan was introduced in April, with possible action in May pending the ZBA decision regarding setbacks. The wall issue could be resolved during the site plan review process. Therefore, the focus of discussion for the ZBA should be the requested setback variances.

Board Member Pall believed the two matters could be handled separately, with the ZBA ruling on the setback variance request and making recommendation to the Planning Commission on the wall.

Chairman Marshall-Rashid asked the applicant how long he had occupied the building. Mr. Gibson responded he had been there 11 years and explained the issue with the roof trusses being broken with heavy snows in years past. Mr. Wangeman elaborated on the trusses, that there had been emergency repairs to handle, but that this type of truss is no longer made and the building had seen its serviceable life.

Board Member Crockett asked about the overhead door at the northwest corner of the property, noting it could only be accessed by crossing the city property.

At this time, the board began its review of the request 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 members discussed that compliance would result in a building of almost half the current size, whether an industrial operation could occur in a building of such size, and that the ZBA review is an opportunity to bring a property into district compliance.

Board Member Karr read from Section 1702 of the Zoning Ordinance on non-conforming structures, noting that the intent is for improvement but not to encourage survival of non-conformities. He also asked whether there would be another way to make the building fit the site.

Board Member Clinton noted that this was her first meeting, and as a new member she wondered whether strict compliance with this standard would be a disincentive to maintain existing buildings.

Chairman Marshall-Rashid stated that he owned a non-conforming property and understands the applicant's desire to rebuild, but it is the property owner's burden to show that the property cannot be used for its permitted purpose under the current regulations.

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

Board Member Crockett stated that a lesser variance might be possible to meet the applicant needs, but would require a smaller building to be built.

Board Member Clinton asked the applicant why the section of building on the north end is being kept, to which Mr. Gibson replied that it is the newest part of the building and used for cold storage. He stated that he keeps 90% of his equipment inside the building and needs the square footage maximized to avoid storing equipment outside.

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?

Staff again noted the unique aspects of the property as lack of street frontage and access via an easement to the east, topography to the west and city property that cannot be sold without a vote of the people.

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

Board Member Crockett raised his concern about the proximity of the operation to residential properties and believed there should be screening; Karr agreed that screening is needed.

Board Member Karr then read from Section 1600 footnote "j" for the I2 Zoning District side-yard setback which stated "No building shall be located closer than fifty (50) feet to the outer perimeter (property line) of such district when said property line abuts any residential district". As the property to the north and south is zoned R-1 and RM-2 Residential, the 50 foot setback would apply rather than the 30 foot setback. Thus the resulting variance request is 16 feet on the south (34 foot setback), 32 feet on the north (18 foot setback) and 46 feet on the east (4 foot setback).

Board members discussed the requirement for a 50 foot setback on three sides of the property and determined an approximately 10,000 square foot building could be built, which would likely not be conducive to an industrial building.

Mr. Gibson stated that his plan includes shortening the building and cleaning up the area. If he removed less than 60% of the building and did not request a variance, the equipment that is now inside would be left outside.

Mr. Wangeman repeated that there are unique issues with the property.

Board Member Clinton inquired as to whether applying current setbacks could be a taking of the property. She understood wanting to improve the conformity of the building, but that she is concerned about rigorously applying the setbacks when a property owner is trying to improve his property.

Crockett stated that his concern was protecting the residential neighborhood and also had an issue with access to the property from city property. Marshall-Rashid and Karr agreed and believed that increasing the north setback would allow for screening as well as keeping access to the back of the property on the subject property.

Mr. Gibson asked staff about the city property and whether it wasn't an alley. She responded that she had researched it and it is not dedicated right-of-way, but city owned parkland.

Chairman Marshall-Rashid asked the board whether they wanted to postpone action until a site visit could be made.

Board members discussed their concern with the north setback and that there needed to be access to the rear of the property that did not encroach upon adjacent property, whether a setback between 30 and 50 feet addressed concerns, that they could support variances for the south and east setbacks, and that the request was a complicated and difficult decision where the long term building use and changes of use over time needed to be considered.

Board Member Karr asked whether the retention basin could be moved to the north, to which the response was the topography would not be conducive.

Mr. Gibson explained that he would add landscaping and that the jogs in the building lessened the visual impact. He needed a building with cold storage and heated areas.

At this time, Board Member Karr made a motion based on the findings of fact in the presentation and information provided by the applicant and the board's deliberation to: approve a 16 foot variance from the required 50 foot side yard setback from the south property line, a 46 foot variance from the required 50 foot front yard setback on the east property line. No relief is granted from the required 50 foot side yard setback from the north property line given the adjacent residential district and uses. The variances are based on the practical difficulties of the unique lot topography, access easement, and parkland on three sides.

Support for the motion was by Board Member Crocket. Before the vote was called, Board Member Clinton asked what she should do if she supported the two variances in the motion but would also consider a variance for the north setback. Board Chairman Marshall Rashid responded that she could vote against the motion and make a new motions should the original motion fail.

Upon roll-call vote, the motion carried 5-1, with Clinton voting against the motion. A 16 foot side yard setback variance from the south property line and a 46 foot front yard setback variance are granted.

No action was taken on the request for relief from the wall requirement.

### **Election of Chair and Vice Chair/ Secretary**

Staff provided a summary of the board positions. A motion was made by Clinton with support by Morrison to nominate Marshall Rashid as Chairman and Karr and Vice Chairman/Secretary; motion carried 6-0.

### **Bylaws Amendment**

Staff reviewed changes to the Bylaws to require training to be shared among members that were not able to attend. A motion was made by Clinton, with support by Karr, to add a Section Twelve to the Bylaws specifying training requirements; motion carried 6-0.

### **Updates**

Staff provided the updated language on front-yard setback averaging in the single family districts.

Seeing no further business, the meeting was adjourned at 9:47 p.m.