



ZONING BOARD OF APPEALS

August 6, 2019

A regular meeting of the City of Petoskey Zoning Board of Appeals was conducted in the City Hall Council Chambers on Tuesday, August 6, 2019. Roll was called at 7:00 P.M.

Present: Michael Karr, Chairperson
Mary Clinton
Ben Crockett
Chris Hinrichs
Jim Knibbs
Lori Pall

Absent: Scott Morrison, Alternate

Staff: Jim Murray, City Attorney
Rob Straebel, City Manager
Amy Tweeten, City Planner

Upon motion and support, the minutes of the June 4, 2019 meeting were approved with corrections 4-1, with Knibbs abstaining.

Case #836 Time Extension for Reasonable Accommodation

Chairman Karr gave a summary of the request and explained the meeting process, asking if any board members had questions of staff before hearing from the applicant.

Board member Clinton wanted to let the board know that she was a good friend of a Harbor Hall board member, and wanted to disclose the relationship in case anyone felt she had a conflict and should recuse herself from hearing the case. She believed she could be objective in the case.

Board member Pall asked about the deadline of September 3rd when the meeting took place on July 10, 2018 and therefore the deadline should have been July 9th according to Roberts Rules of Order.

The City Attorney replied that the issue was raised by Harbor Hall that the deadline was one year from when the minutes were approved, and staff and the City Attorney concurred. He advised that the method of calculating the deadline under Michigan law could be interpreted in different ways. The City Attorney summarized the issues before the ZBA. He stated the request was for an extension of a Federal Fair Housing Act reasonable accommodation request and to extend a variance. He stated that the meeting was not intended to be a reconsideration or rehearing, but rather whether the reasonable accommodation under the FFHA and variance should be extended.

Under the Zoning Enabling Act, an aggrieved party can appeal a decision to circuit court, which did not occur in this case. So the decision of the board was final.

Mr. Murray explained that in consideration of a time extension, the ZBA should look at four factors:

1. Whether there is a finding the extension is no longer warranted due to changed circumstances from those circumstances that warranted the initial accommodation and variance;
2. Whether the zoning ordinance has been amended;
3. Whether there have been changes in the law;
4. Whether there exists a finding of lack of due diligence.

Chairman Karr asked the City Attorney whether it was his opinion that the one-year approval clock started with the approval of the meeting minutes on September 4, 2018. Mr. Murray stated that he agreed with staff.

Chairman Karr then returned to board member Clinton's question of conflict of interest, which Mr. Murray stated there was no conflict. Chairman Karr also wanted to correct the staff memo regarding the setback variance issue, as the board had approved one of the two setback variances requested. He then asked for the applicant to present their request.

Rock Wood, Harbor Hall Attorney, stated that he had confirmed with the City Attorney that September 3rd was the appropriate deadline, but that they had made application for the time extension before July 10th. In reviewing the factors spelled out by the City Attorney, Mr. Wood detailed the changes made to the site plan as a result of the original ZBA approval, City staff and Planning Commission input. He noted that they had responded to all of the various requests, and that they are now working on the Planning Commission conditions of site plan approval and have only the utilities and landscaping plans to finalize before applying for a zoning permit and building permit. He agrees with the City Attorney that there have not been any changes to the ordinance or law, and asked that the request be extended. He noted that most ordinances have a process for extension spelled out, but the Petoskey Zoning Ordinance did not.

At this time, chairman Karr opened the meeting for public comment.

Tom McCale, 600 Arlington Ave., stated that he has been in recovery for 31 years, that there are 2700 people in recovery in Emmet County, that Harbor Hall is an asset and need in the community, and thinks the extension should be granted.

Jeff Grantham, 801 Baxter Street, believes the circumstances have changed as there are now two parcels and a two-building site plan and therefore the Board has the ability to not grant the extension. He believes in Harbor Hall's mission, but they should not be allowed to expand in downtown Petoskey, and he does not agree that the September 3rd date is the deadline for construction commencement.

The meeting was then closed to public comment and chairman Karr asked the board members if they had questions for the applicant.

Board member Clinton asked Mr. Wood about the reason behind making the property into two parcels.

Mr. Wood stated it was in response to staff, who then stated that the ordinance does not allow two principal uses on a single parcel, which was the reasoning. Mr. Wood noted that they had made changes to the plan as a result of the 9 person accommodation, as well as to comply with staff and Commission input to get site plan approval.

Chairman Karr then moved to board deliberation. He commented that the meeting when the accommodation was approved was the longest ZBA meeting he had been involved in, and believes

the board did their best to address their first Fair Housing Accommodation request. He understood the temptation to reopen the case, but the request before them was a time extension of the accommodation granted. He had reviewed the July 10 meeting minutes and found that the majority of the discussion was about how the board reached its determination of medical need for the accommodation, relying on expert testimony. There was no discussion by the board of density, whether one or two buildings were appropriate, however these were concerns raised by the public. The ZBA does not undertake site plan reviews, but were charged with making a determination whether limiting a dwelling to four unrelated individuals allowed access to housing for individuals with the disability.

Board member Clinton agreed that the issue before the board is not to revisit the approved accommodation, but to consider a time extension.

Board member Pall believed that the circumstances had changed and that they had not been diligent in meeting the one-year approval. The accommodation is for nine individuals, yet the plan now has a multi-unit building that can hold 32 individuals plus the building with the 9 person accommodation, so the accommodation has changed. The legal opinion from Miller Canfield stated that what the ZBA approved was a dwelling and not a residential care and treatment facility, but their new plan blurs the distinction and causes confusion. She had contacted Hazelden in St. Paul and they have the sober living facility at a different location from their treatment, have 40 beds in a city of 600,000 versus Petoskey with 6,000.

Board member Clinton could appreciate that there were changes to the site, but the accommodation granted by the ZBA started those changes in motion and Harbor Hall was following the City process. The ZBA can't just reopen a case when an established process is followed or no applicant will have certainty. There is a basic sense of justice involved.

Chairman Karr agreed the site plan had changed, but does not believe the circumstances that lead to the decision of allowing nine (9) unrelated individuals to live together as a single housekeeping unit have changed. As an architect, he believes the applicant had been diligent in moving the project forward and does not agree with reopening the accommodation consideration as he did not believe the relevant facts have changed.

Board member Pall repeated that the Miller Canfield opinion to the Planning Commission stated that a residential care and treatment facility is not allowed in the B-2B District so the circumstances of the accommodation for nine (9) unrelated persons have changed because the plan has a residential care and treatment facility.

The City Planner responded that the Miller Canfield opinion was that the uses presented in the site plan are allowed in the B-2B District. The City Attorney responded that the uses proposed by Harbor Hall are allowed per the zoning ordinance.

Board member Crockett stated that there was a narrow question before the board in their review of the housing accommodation, which was whether the ordinance restriction of four unrelated persons per dwelling was burdensome to a person with the disability of addiction. The board found that it was burdensome, but not to the extent of what was requested. The question was housing, not a site plan. He suggested using the four factors provided by the City Attorney as a review checklist.

1. Has the zoning changed? No
2. Have other laws changed? No
3. Have they been diligent in moving forward on the accommodation granted?

Board members Heinrich, Karr and Clinton believed they had been trying to move the project forward. Board member Pall felt the site plan was an end around to get what they wanted.

4. Have the circumstances changed?

Chairman Karr did not believe the medical reasons for granting the accommodation had changed, and that the board had arrived at the 8 person accommodation based on expert testimony. Board members Pall and Knibbs felt the change of the site plan was a change of circumstance and that the plan approved was not what had been envisioned when an accommodation for 9 unrelated persons was granted.

The City Attorney noted that the change of circumstance should be specific to the circumstances that warranted the accommodation and variance.

Board member Pall stated that residential care and treatment facilities are not allowed in the B-2B District which is a reason to not extend the accommodation.

Board member Clinton stated that the facts of the site plan changed based on the decision made by the ZBA, that the board has to respect the process or no applicant will ever have certainty. The role of the ZBA is to determine if there is a reason to extend the approval, not to keep going back and forth and questioning past actions. She then asked staff about site plan approval timelines, to which staff stated a planning commission approval is for 6 months.

At this time, board member Crockett made a motion to grant a one-year extension for the reasonable accommodation granted on July 18, 2018 to Harbor Hall at 114 Rush Street for nine unrelated individuals and to grant an accommodation from the 400-foot distance requirement based on the expert testimony that eight unrelated persons and one leader is an ideal size for adults with the disability. Board chairperson Karr supported the motion which carried on a 4-2 vote, board members Pall and Knibbs voting against the motion.

Updates

Staff informed the Board that there would likely be a case for the September 3rd meeting date.

Seeing no further business, the meeting was adjourned at 8:05 P.M.

Minutes reviewed by Ben Crockett, Vice Chairperson/Secretary