



ZONING BOARD OF APPEALS

May 7, 2019

A regular meeting of the City of Petoskey Zoning Board of Appeals was conducted in the City Hall Community Room on Tuesday, May 7, 2019. Roll was called at 7:00 P.M.

Present: Mary Clinton
Ben Crockett
Jim Knibbs
Scott Morrison
Lori Pall

Absent: Chris Hinrichs
Michael Karr

Staff: Amy Tweeten

Also Present: Daniel Davis, Jr., 702 US-31 North
Bob and Karel Howse, 719 Michigan Street
Joe VanKalker, 802 East Mitchell Street

Upon motion and support, the minutes of the April 2, 2019 meeting were approved 5-0.

**Case #832 Administrative Review of Administrator's Decision
regarding 802 East Mitchell Street**

Staff provided an overview of the request and her rationale for finding that an expansion of the non-conforming structure would have to meet current corner-front yard setbacks. She noted several unique attributes of the structure that made the determination difficult, including that the garage is attached below grade so not attached in a typical manner; the structure has similar setbacks to a detached garage rather than as part of the principal structure; that for determination of the corner-front yard there was only this below grade structure and a neighboring structure; felt that adding above-grade living space was increasing the non-conformity of an otherwise non-active space, thus having greater community impact and perpetuating the non-conforming structure.

Board chair Crockett asked if board members had any questions of staff. Board member Clinton asked for clarification of whether for this first case (#832) they were only reviewing the determination that the addition was an expansion of a non-conforming structure, not what the appropriate setback should be. Staff confirmed that the first case was reviewing the decision of whether the proposed addition was an increase in non-conformity that would require a variance.

Board chair Crockett then asked the applicant to give a summary of the request.

Joe Van Kalker, 802 East Mitchell Street, explained his plans to remodel the structure and provided additional illustrations to board members. He didn't know how the addition would work if he could not build to the edge of the existing building due to concerns over water intrusion. He noted that he is not decreasing the setback, but only going vertical on the existing structure and didn't see why it was considered increasing the non-conformity.

Bob Howse, 719 Michigan Street, commented that if the footprint stays the same that he didn't think the non-conformity was being increased; asked about off-street parking; and noted that the house had been an eyesore for several years and he was happy someone wanted to make improvements.

Karel Howse, 719 Michigan Street, commented that there had been problems with the previous owner who parked three vehicles on Lockwood across from the alley, which is the garage access to houses on E. Mitchell and Michigan. She felt this was an improvement that she supported.

Mr. VanKalker responded that he plans to park vehicles in the back yard and has space to put up a garage in the future.

Board members questioned whether the applicant was enlarging the non-conforming structure if only the height was being increased; what the setback and height restrictions of a detached garage would be; whether it was because of the addition of living space that it was an increase in non-conformity; and how it would be viewed if it were already living space and not a garage.

Board member Pall believed that increasing the height did increase the non-conformity because the non-conforming setback would be increasing in height, having a greater impact on the airspace of the adjacent street. Increasing the height with living space increases its non-conformity.

Board member Knibbs felt 1704(2)(a) was not clear and was not sure going vertical was an increase in non-conformity. Board member Clinton commented that she understood the concerns about bulk but does not think this is an increase in non-conformity by building vertically and asked whether there was more language in the ordinance that helped to clarify this type of situation.

Staff responded that the increase in height and use was perpetuating a non-conforming structure; that it was the structure and use in combination that indicated to her it was increasing the non-conformity and searched the ordinance for the relevant language.

Board chair Crockett asked whether because adding living space to the non-conforming structure she saw it as more than maintaining an existing non-conforming situation, to which staff replied affirmatively.

Mr. VanKalker asked if it would make a difference if the added space were not living space and why adding height makes a difference.

Mr. Howse commented that the structure with a flat roof is not better from an appearance standpoint.

Board member Morrison commented that the purpose of zoning is to protect open air so increasing the height of the non-conforming below-grade garage is an impact.

Board member Clinton felt the second sentence that a structure may be enlarged or altered in a way which does not increase its nonconformity applied to the vertical addition.

Board member Knibbs asked staff what about this addition made her determine that a vertical addition at the existing setback was an increase in the non-conformity versus an increase that does not increase the nonconformity.

Staff found the intent language in Section 1702 and read “it is the intent of this ordinance to permit legal nonconforming lots, structures, or uses to continue until they are removed but not to encourage their survival”. Her determination was based on the belief that the addition at the existing setback was contrary to that intent as it was encouraging the continuation of the non-conforming structure.

Mr. Howse commented that the purpose of notifying neighbors was to see if there was any opposition which there appeared not to be. Staff confirmed that the neighbor to the east (806 E Mitchell) had come in to find out about the request and had no concerns.

Board chair Crocket asked board members to consider developing a motion.

Board member Pall then made a motion to uphold the determination of the zoning administrator that an addition over the existing attached garage at 802 E. Mitchell Street must meet the corner-front yard requirements based on the findings in the agenda memo and board discussion that the determination meets the spirit and intent on Section 1702(4)(a) which is to bring non-conforming buildings into conformity. Support for the motion was by Board Member Clinton. The motion failed on a 3-2 vote (members Clinton and Morrison voting against the motion) as an affirmative vote of four (4) members is required to overturn a decision of the zoning administrator.

A motion was then made by Clinton, with support by Morrison, to reverse the determination of the zoning administrator based on the finding that a vertical addition does not increase the non-conformity of the structure. The motion again failed on a 2-3 vote (Crockett, Knibbs and Pall voting against the motion) as an affirmative vote of four (4) members was not achieved.

Case #833 Corner-Front Yard Variance for 802 East Mitchell Street

Staff provided a summary of the request; that with the information provided, it appeared the existing setback at 802 E Mitchell was 3 feet setback and the house at 415 Lockwood had a front setback of 8 feet for an average corner-front setback of 5.5 feet, requiring a 2 ½ foot setback variance.

Board member Clinton asked if the wall of the addition were set back 2 ½ feet whether a variance would be necessary, to which staff responded it would not.

Joe VanKalker, 802 East Mitchell Street, asked about the front yard setback and staff explained that as there are three adjacent houses, the setback of those three would have to be averaged.

Board member Clinton stated that she did not believe the applicant’s statement of practical difficulty addressed the need for a variance as the property could be used for its permitted purpose and the statement discussed drainage issues with the structure if the wall set back 2 ½ feet. She felt there was a way to position the roofline to avoid this problem.

Mr. VanKalker asked whether the roof could encroach into the 5 ½ foot setback to which staff responded that it could as the setback is from the wall or other vertical structural element such as roof posts.

Board member Morrison stated that he does not see a practical difficulty as an addition could be constructed that was set back from the existing building wall.

Board chair Crocket suggested the board review the variance standard 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 member Morrison did not think the standard was met because there was enough lot area to have an addition, and moving the building back two feet.

Mr. Van Kalker explained the issue with water intrusion if the wall is off-set.

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

The board felt there were other solutions, including adding the two feet elsewhere on the house structure.

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 board discussed whether it was a common or unique situation, noting several houses in town with similar underground garages. The Board did not feel strongly whether or not this supported a variance.

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

Morrison felt that since the neighbors had spoken in favor of the variance or were not opposed, and that it would be a small deviation, that it was fair to neighboring properties.

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

Board member Clinton did not feel the need for the variance was created by the applicant.

Board member Knibbs then made a motion, with support by Clinton, to deny a corner-front yard variance of 2 ½ feet at 802 East Mitchell Street based on the findings in the agenda memo and submitted materials, and in reviewing the variance standards checklist that there is insufficient evidence of a practical difficulty created by Section 1704(2)(a) that prevents the property from being used for its intended purpose. The motion carried on a 5-0 vote.

Updates

Staff updated the Commission on cases pending for the June meeting, including a Fair Housing Accommodation Request to allow 8 persons as a recovery residence at 213 Williams Street, and a parking variance request at 502 Michigan Street. In addition, the City Attorney was working with

the attorneys for Harbor Hall to determine whether their variance expires July 10 (meeting date) or September 4 (minutes approval).

Finally, City Council is reviewing an ordinance that would amend the fence regulations to allow corner front yard decorative fences.

Seeing no further business, the meeting was adjourned at 8:50 P.M.

Minutes reviewed by Ben Crockett, Vice Chairperson/Secretary