

**CITY OF MARQUETTE
BOARD OF ZONING APPEALS
OFFICIAL PROCEEDINGS
July 1, 2021**

MEETING CALLED TO ORDER

A regular meeting of the Marquette City Board of Zoning Appeals was called to order at 7:00 p.m. on Thursday, July 1, 2021, located in the Commission Chambers of City Hall, 300 W. Baraga Ave.

ROLL CALL

It was moved by Mr. Constance, seconded by Mr. Vasseau, and carried 6-0 to excuse the absences of Ms. Dombrowski and Mr. Dunn.

Present: Chair Mr. Ottaway, Vice-Chair Ms. Wright, Mr. Vasseau, Ms. Perhach, Mr. Neumann, and Mr. Constance.

Excused Absent: Ms. Dombrowski and Mr. Dunn.

MINUTES

It was moved by Mr. Vasseau, seconded by Ms. Wright, and carried 6-0 to approve the minutes of June 3, 2021, as presented

ADDITIONS TO OR DELETIONS FROM THE AGENDA

It was moved by Mr. Neumann, seconded by Mr. Vasseau, and carried 6-0 to add a piece of correspondence to item 1.A. for the public hearing which has 8 pages of public material of a previous appeals case.

PUBLIC HEARINGS

04-VAR-07-21 – 615 Cedar St. (PIN: 0172710): Catherine Jarvis and 615 Cedar Street, LLC are seeking a 2.4-ft side yard variance and an 861 S.F. lot area variance from the City of Marquette Land Development Code Special Land Use required conditions for a duplex dwelling located at 615 Cedar Street.

A. Landers stated the Board of Zoning Appeals is being asked to review an application for variances from the City of Marquette Land Development Code Special Land Use required conditions for a duplex dwelling. She stated the existing single-family home does not meet the 10-ft side yard condition for the existing home setback to the north side lot line and the 6,000 S.F. lot area requirement when proposing to convert a single-family home to a duplex dwelling. She referenced the staff report and attachments, and visuals from the agenda packet were shown. A. Landers stated the current lot area is 5139 S.F.; therefore, they are asking for that 861 S.F. lot area variance. She also stated the current northside setback to 7.6 ft; therefore, they are asking for a 2.4 ft. side yard variance. She stated there was a previous variance back in 1989 and that the

information was provided. She also stated on the screen is the application with their attachment with answers to the questions regarding practical difficulty standards, items A-J; the area map with parcel outlined in blue, the block map with parcel outlined in blue, photos of the site, and location sketch. She referenced the staff report again for information concerning when the main dwelling was built and the times it was remodeled and referenced visuals to include the hard surface areas/parking area.

A. Landers noted that the meeting tonight is not reviewing whether this to be approved as a duplex, but rather just reviewing variances from duplex standards. She stated that if this were to be approved, that staff would like the condition that this is tied to a special land use approval through the Planning Commission for a duplex dwelling because if it is approved tonight, it still must pass those special land use requirements. She also stated back in 2016, there were 2 appeal cases of that 2016 zoning permit and that the BZA stated that the zoning permit met the standards. She stated the appeals were then taken to the circuit court; however, the BZA won the case in the circuit court, so the zoning permit had to be approved and that is why they were able to build and add those additions onto the site. She then asked if anyone had any questions.

Ms. Wright asked if this was currently a duplex. A. Landers stated it was approved for a single-family dwelling.

A. Landers explained that there was a complaint about it being a duplex and that they could not get into the structure to verify that. She further explained that her coworker who was the Planning/Zoning Technician at the time sent a letter and the property owner responded stating it was not a duplex and that per the zoning administrator that was all they could do because there was no outside proof that there is a duplex for them to get inside.

Mr. Neumann stated he could recall seeing a plan for the structure that did show kitchen facilities upstairs on a 2nd floor and a doorway that would have been able to be closed, locked, and separated from the ground floor unit. He stated that was not part of what the BZA was reviewing at the time, but that it was in the plan that they had. He also stated for that reason, there was suspicion about the construction of the structure as a duplex.

A. Landers acknowledged there were plans that the City did not have but the County Building Codes did have. She stated that at that time the Zoning Administrator met with the property owner and that they had to remove the doorway which could separate the spaces. She also stated that a single-family home is allowed to have 2 kitchens as long as they cannot separate them into different spaces. She stated that in the past they have been able to catch duplexes by seeing an ad saying they had 2 units for rent, etc. and without that evidence, their hands are tied as there is no proof of a duplex use.

Mr. Neumann had another question concerning the original structure. He asked if that structure would satisfy the side yard setback that is required for a duplex today. A. Landers responded stating that for a single-family the existing 2 side yard setbacks are met and for a duplex request you have to have 10-ft side yard setbacks which is greater than a single-family requirement. She showed the location sketch of and indicated of what appeared to be the original structure is 11.1 feet from the side lot line, but the

structure is not parallel with the lot line, so there was a good chance that the previous existing structure could have meet the 10 foot o or that it would be a little less than that 10 foot requirement.

Daniel Mead, representing the applicant, stated they were requesting 2 variances, 861 square foot lot area variance regarding the total square footage of the lot and regarding the north side setback variance of 2.4 feet. He reminded the board that the original structure could not be seen on their visuals so asked that they not pontificate about where the original structure was or was not. He stated that he felt like the requirements were met and very clearly laid out in the application. He asked that the board take into consideration that when the city plat was laid out it was done do to preserve the city environments, but that they were very tight spatially. He requested that they take into consideration that neighbors sometimes tend to be particular about that this is what these variances are for. He stated that strict conformity would cause an unjust remedy. He also stated that the zoning ordinance is for public health and safety. He stated that it was not being used as a duplex. He also stated that the blueprints that were referenced were changed with the city council. He cautioned the board not to give credence to mere suspicion without proof. He stated that they were not here to ask for permission to have a duplex, but rather just asking for the spatial variances.

Mr. Vasseau stated he was looking at the administrative review of standards, item c. not a result of the actions of the applicant. He felt that Mr. Mead's response dealt with it as a single-family structure vs. the addition of a duplex itself, which he interpreted as the action of the applicant. He asked Mr. Mead to clarify.

Daniel Mead stated again that it is not a duplex, so the action would be, "you somehow brought this upon yourself." He stated so, asking to use a home as a duplex would not be bringing a result based upon what it is that you have done. He also stated that the original structure on the north lot line was built extremely close to that north lot line and that was the action of the original building owner, not the action of this current applicant. He stated that rules put into place regarding the plat change over time. He also stated that in his mind, this was not the action of the applicant, but rather the action of the original concept of close city neighborhoods, high density.

Mr. Constance stated that he had additional questions. He gave an example of what if the applicant wanted to put a 4-plex there, that they could say that the lot was too tight. He pointed out that the applicant did not cause the lot to be too tight and that this just would not fit. He stated for that reason, he felt that it was important to consider the fact that it was already extremely tight spatially.

Daniel Mead pointed out that was his exact point; that the plat size changed due to the zoning laws and requirements changed and that it did not have anything to do with the applicant. He stated that you cannot deny an application based upon whether or not it meets the duplex requirements because that is not what this meeting was addressing. He asked that the board stick to the subject of the technical request for variances only.

Ms. Perhach asked when the zoning laws were changed, whether it was before or after the applicant bought the house.

A. Landers stated the new Land Development Code came into effect in 2019, which is after the applicant acquired the property.

Mr. Neumann questioned whether or not the BZA has the authority to even grant the requested variances. He stated there was a published opinion by the court of appeals from May 20, 2021 (MLND Interests v. Township of Little Traverse) and that the summary was that the ZBA had the authority to grant the applicant the nonuse variance if plaintiff has not created the practical difficulty. Because the record evidence establishes that the applicant created the practical difficulty, the ZBA lacked authority to grant the variance. He stated that he felt the decision hinged solely on the previous action of the applicant to expand the structure. He also stated by expanding the structure per the 2016 zoning compliance permit we have affirmative action by the application that perhaps puts us in a situation that we may lack authority to grant a variance. He asked if there was anyway the board could get a survey or records showing the setback of the previous structure prior to the 2016 additions. A. Landers stated the board could choose to postpone the hearing and ask for that information.

Daniel Mead pointed out that when the applicant made those changes, she did it in 2016 before the changing zoning laws in 2019; therefore, would have had no way of knowing that the laws would change, so he felt that the May 2021 decision was not applicable.

Mr. Neumann stated that in the application (pg. 3 of 5), looking at item h. referencing impact to one of the standards, that #2 reads, "Both floors are designed to be used as residences, albeit separate residences." He asked the applicant to speak to that.

Daniel Mead stated that the original design was to put the structure in as a duplex and that the city said, no so she changed it. He also reminded the board that the process of being approved for a duplex was an entirely separate process from this request for variances.

A. Landers stated the ordinance in place during 2016, the 10-ft side yard requirement for duplexes was the same requirement as now. She stated however the lot width and lot area requirements are now a smaller requirement than in the previous ordinance. Ms. Perhach stated so in 2016 she still would have had to apply for variances. Daniel Mead stated to his recollection the blueprints were submitted in 2014 or 2015. Mr. Neumann pointed out that the standard that the board is being asked to consider relaxing is the 10 ft. side yard, which is the same today as it would have been before the land development code and the relevant standard as far as the side yard variance request has not changed. Daniel Mead stated correct, and there is nothing in front of you that says that existing wall has changed, so you cannot rule on what is not in front of you. Mr. Neumann stated there was an expansion to the north. A. Landers showed the existing floor plan from the 2016 zoning permit. Daniel Mead stated the bump out is from the second floor. A. Landers showed the proposed addition from the 2016 zoning permit. Daniel Mead stated it does not show the setback, so nothing in front of the board confirming or denying.

Mr. Ottaway requested the applicant to speak on impact. Daniel Mead offered the analogy that if there were an 8-person single family that lived on the property utilizing both floors, that it would be no different than 8 people living in 2 separate living spaces in a duplex. He stated you would hear impact from certain individuals regarding density, water, and sewer. He also stated to disregard those as those are the requirements that we are going to look at through here. He stated there is no further impact to fire, snow removal, water run-off, and the applicant abided by all those permeable surfaces as opposed to concrete; there is no run-off to the neighbors.

Chair Ottaway opened the public hearing.

Colleen Clark, 450 E. Hewitt Ave, stated that the north side and the west are both on her property line. She stated that on the north side she already struggles to have enough space to maintain the fence that is there due to a pathway/walkway that now exists there. She also stated that water is an issue because the level of her lot when she did the building is now higher than what it used to be, so now that part of her yard is always wet and does not dry out like it used to. She is concerned with the language in the application stating that there are no construction requests associated with this "at this point" as she was told it would not be a duplex and was not designed as one. She stated that the applicant knew it was a single-family dwelling at the time of her purchase. She also stated that on the west (the rear of that lot) is another piece of property that they own right next door and that the patio area is abutted right up against the property line and that they cut down the lilacs that separated it. She stated in reference to impact, she could not use her backyard the way they had before because now their backyard is so visible due to the 2nd story windows. She stated that the applicant has continually pushed the line further and further.

Walt Anderson, 39 Lakewood Lane, stated that he used to live at 430 Lakeshore Blvd and his mother owned 607 Cedar, the house to the south of the applicant's residence. He stated that he went through a lawsuit with the City of Marquette regarding the building of the structure. He also stated he had a timeline of events that he turned over to the board and was accepted as correspondence regarding what the city went through regarding the building of the structure that exists, which was originally designed as a duplex at the request of the applicant. He stated that the city went through considerable time and effort to get her to change that design supposedly to a single-family residence. He referenced Handout B stating a condition that the structure remains single-family use dated 07/21/2016, citing the fact that the applicant knew it was supposed to be a single-family dwelling and agreed to it. He also referenced Handout C, the bottom of the page dated 08/22/2016, "The owner also told the staff in person that this house is not intended to be used as a duplex, 2-family home. Staff told the owner that the violation of the single-family use limitation would result in staff action to bring the property into compliance." He stated that many homes have more than 1 sink, refrigerator, and laundry area in the United States and that people are free to equip their homes with amenities as they see fit, but that compliance to the structure remaining a single-family dwelling was a condition of that permit, which the applicant agreed to at the time of construction. He then referenced item D, Board of Zoning Appeals dated 09/01/2016, stating that these issues were discussed with the property owner and some design modifications were made, but that she also stated clearly she is "not designing this

home as a duplex” and “not intending to move anybody in there or have renters in the home” understanding that she would be subject to fines.

Tina Anderson, 607 Cedar St, stated all she wanted to touch on was impact. She stated she lives in the house next door, has lovely neighbors, a lovely neighborhood. She also stated that when Mr. Mead touched on snow removal and not impacting other neighbors, that did happen since the new owner took possession. She stated that her husband was outside snow-blowing, that the applicant's house is very large, which was fine, but that snow was blowing and creating a wind tunnel and the new owner called the police saying that we were snow-blowing into her yard, which she stated was not happening. She also stated that most of those in the room were in her neighborhood and are all neighborly and nobody is against anyone using their property for what it was intended for. She reiterated that was the point of contention for everyone was that they each have their own property lines and that it does impact neighbors if you keep granting more and more space to use their houses for what they were not intended to. She stated speaking to public safety, that the house is very large and that there was a flower or planter box that was granted; that house already was in the city right-of-way and that the planter box goes out quite a bit further, so her kids (5 and 9) are out riding their bikes on the sidewalks and are not allowed to go that way due to a visibility issue for drivers not being able to see. She stated there are 11 kids in that block all under the age of 10.

Jim Clark, 450 E. Hewitt Ave, stated that Colleen was his wife and that they also had a vacant lot at 619 Cedar Street, which is contiguous to the applicant's property. He stated that he felt this was a “self-imposed hardship.” He pointed out that she was told by the city that the property was a single-family residential lot. His concern was that public safety on that street would change significantly with increased traffic (citing that if each family had 2 cars, would double the # of cars) and that there did not seem to be a way to put 4 cars in that driveway. He believes that the applicant intended for the structure to be a duplex all along since the power company installed a new transformer and a 600-amp service into the structure (200 amps for each floor and 200 amps for electric driveway). He stated the city went “above and beyond” by allowing them to put in a heated driveway all the way out to the public street, putting it right in the public right of way. He stated that Michigan law specifically states that any apparatus controlled from inside the home is part of the house, putting her in violation of the zoning ordinance now already. He stated, “high-density developments have high-density problems.”

Cindy Laitinen, 602 Cedar, stated she is the neighbor across the street and is here mainly to show her support for her fellow neighbors. She stated that they were all there, all on the same page and that they have her full support.

No one else wished to comment. Chair Ottaway closed the public hearing.

Mr. Constance stated that there is nothing in front of the board that either confirms or denies “it” and feels they need more information in order to confirm or deny something. Mr. Neumann stated that he was looking for a site plan for 2016 and that the minutes from the 2016 BZA meeting does not show the actual setback that he is aware of. He

stated the question is whether or not the previous structure would have met a 10-foot setback required for a duplex back then and reiterated he is concerned they may not have the authority to grant the variances due to the addition in 2016.

Mr. Constance and Ms. Perhach stated they are also concerned about the parking situation with a single driveway being a potential impact due to people having to park on the street. Mr. Vasseau stated they meet the number of required parking spaces for a duplex. He stated when looking at items a.-j. he struggles with item c.

Mr. Ottaway reiterated that the meeting was not for the purposes of whether this was going to be a duplex, but only whether the variance request meets the Land Development Code variance requirements, but that he felt they would be remiss to not take into consideration that this variance request is for the conditions for a duplex, as stated right on the agenda. He stated therefore they would have to discuss a duplex a little bit.

Mr. Constance stated he is not the only one struggling with that, he has a problem with items a., c., f., g., and h. and not sure that these things are met. He stated his understanding is that all these have to be met in order to vote in favor of it, is that correct. Mr. Ottaway stated that is correct and it states that in the Land Development Code.

Mr. Vasseau stated the lot is not square and it makes it difficult. Mr. Neumann stated the setbacks run parallel to the lot line. Dan Mead stated it goes from the smallest, for example I have 8.2 and asking for 1.8 from the rear corner which is abnormal. Mr. Vasseau stated his square footage request exceeds by 13% is that excessive, I do not know if it is and I am stuck on c.

Mr. Neumann stated regarding standard, "b. Rights of Similar Properties in the Same Districts. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other similar properties in the same district under the terms of this Ordinance" and I do not believe the right to a duplex is a commonly enjoyed property right in that neighborhood, I am sure there are one or two in the vicinity but that is not a common property right. Ms. Perhach stated I would consider it a common property right if it did not require a Special Land Use permit.

Mr. Ottaway stated regarding standard, "c. Not a Result of Actions of the Applicant. That the special conditions and circumstances do not result from the actions of the applicant." He stated this board has meet on numerous occasions and discussed item c. especially when there is any new construction, any time you do something and want to make a change it is a result of the applicant. Mr. Vasseau stated the structure is functioning currently as it is, the request is a little self-imposed, I can see it either way. Mr. Perhach stated she believes they need more information regarding the off-set and if the previous structure prior to the addition if it met the 10-ft side yard setback.

Mr. Neumann asked what would be required for a short-term rental application for this property. A. Landers stated this block does not allow for another short-term vacation home rental as there is already one on this block, and the maximum of the 250

certificates is met currently. Mr. Neumann asked about the short-term parking standards. A. Landers stated if this was allowed to be a short-term rental for a duplex it would be allowed less parking than for a long-term rental.

Mr. Ottaway stated looking at this request can somebody tell me how we can get past item c. Mr. Vasseau stated he does not know how they can, and he is on the fence regarding this. Mr. Constance stated he cannot get past item c. and a couple of other items either. Ms. Wright stated you buy a single-family lot, you know it is, struggle through all this that does not fit, I cannot get past c. either. Ms. Perhach stated she is in agreement regarding c. especially if the addition created the variance. A. Landers stated for the record we do not know that for certain. Mr. Ottaway stated he would not make the decision based off of whether or not we know the information, if that is something the board wants the information then we can ask the applicant, though for some of the board members that will not make a difference per their statements of this request not meeting all of the items. Mr. Constance asked if we had the answer to that question would that change anyone's mind. Ms. Perhach stated Mr. Constance you also brought up a, c, f, and g, which I also think it does not meet those items. She stated f. Strict Compliance is Unnecessarily Burdensome, I do not think that they meet it, as a single family they meet it, but duplex they do not meet it and it is not a requirement to be a duplex. She also stated if you are buying property you would look to see if it meets a duplex. Mr. Vasseau stated g. Strict Compliance is Unnecessarily Burdensome. Mr. Constance stated I had an issue with that as well. Ms. Perhach stated to be fair this is a little subjective, it is justice to the owner but not to the neighbors. Mr. Vasseau stated if anyone wanted to apply for a duplex, they could. Mr. Ottaway stated impact is the one he is also struggling with. He stated from an impact standpoint regarding safety and more cars there as a result of a duplex. Mr. Neumann stated the standards before us are not an a-la-carte menu, in order to grant a variance all of the standards have to be met, and I believe after this discussion that is not the case.

It was moved by Mr. Neumann, and seconded by Mr. Constance, and carried 5-1 that after conducting a public hearing and review of the STAFF REPORT/ANALYSIS for 04-VAR-07-21, the Board of Zoning Appeals does not find that the request demonstrates the standards found in Section 54.1404(B)(5) (a. through j.) of the Land Development Code and hereby denies 04-VAR-07-21.
Yes: Chair Mr. Ottaway, Vice-Chair Ms. Wright, Ms. Perhach, Mr. Neumann, and Mr. Constance
No: Mr. Vasseau

NEW BUSINESS

Presentation to the City Commission

A. Landers presented a draft of the presentation. The Board discussed it and any additions to the presentation.

CITIZENS WISHING TO ADDRESS THE BOARD

Colleen Clark, 450 E. Hewitt Ave, stated that she wanted to thank the board for their consideration tonight. She stated even though it went the way she wanted it to go, regarding impact, they have a buildable lot on the north property line, so another impact example is her property value.

Walt Anderson, 385 Lakewood Lane, thanked the board for their service to the city. He stated that he served on the board of review for 9 years and the traffic and parking committee for 6 years. He stated that he realizes how hard it is to get people to serve on committees and it frustrates him to see not all the committees are full.

BOARD MEMBER COMMENTS

Mr. Ottaway stated that the potential Vault Hotel project with the Savings Bank is a big topic in the city right now. He stated there are a lot of considerations being done with that Brownfield. He also stated he is the chair of the DDA and the next DDA meeting is on July 8th at The Commons. He stated the public can voice concerns or comments concerning this matter at that meeting.

ADJOURNMENT

The meeting was adjourned at 8:41 p.m.

Respectfully Submitted,



Andrea Landers
Zoning Official
Community Development Department,
For Board of Zoning Appeals
lmediat/bc