

**CITY OF MARQUETTE
BOARD OF ZONING APPEALS
OFFICIAL PROCEEDINGS
July 6, 2023**

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 6, 2023, located in Room 103 of the Municipal Service Center, 1100 Wright St.

ROLL CALL

Present: Chair Ms. Dombrowski, Mr. Patrick, Ms. Wright, Mr. Williams, Mr. Neumann, and Vice Chair Ms. Hill, City Planner and Zoning Administrator D. Stensaas, and Zoning Official A. Landers.

Absent: None.

MINUTES

It was moved by Ms. Hill, seconded by Ms. Wright, and carried 6-0 to approve the minutes of May 4, 2023, as presented.

ADDITIONS TO OR DELETIONS FROM THE AGENDA

It was moved by Mr. Neumann, seconded by Mr. Patrick, and carried 6-0 to approve the agenda with the addition of one piece of correspondence to 02-CAN-07-23.

CITIZENS WISHING TO ADDRESS THE BOARD

Matt Lorenz, 1119 Presque Isle Ave, stated I think this is a waste of our time. You've got these guys over here for this inching three-quarters of a step. I remember what it looked like before that so it's gotten back like three feet and now, you're worried about inches plus they can't even just cut that off if you wanted another foot behind that. It's just I think it's dumb and we should leave them alone. They were trying to improve what their lot looked like beforehand and I think this is a waste of our time and tax dollars.

PUBLIC HEARINGS

03-VAR-06-23 – 1029 Second St. (PIN: 0400050): Robert and Katie Davis are seeking a .3-ft eave encroachment variance, a 13.4% rear yard coverage variance, a 5.6% impervious surface lot coverage variance from the City of Marquette Land Development Code to allow a 593.03 S.F. concrete patio and an 11.5-ft x 12.5-ft pergola with a metal roof/eaves that encroach more than the maximum of 2.5-ft from the property line located at 1029 Second Street.

A. Landers stated the Board of Zoning Appeals is being asked to review an application for a .3-ft eave encroachment variance, a 13.4% rear yard coverage variance, a 5.6%

impervious surface lot coverage variance from the City of Marquette Land Development Code to allow a 593.03 S.F. concrete patio and an 11.5-ft x 12.5-ft pergola with a metal roof/eaves that encroach more than the maximum of 2.5-ft from the property line located at 1029 Second Street. She stated this was first to be heard at the June 1, 2023, BZA meeting, however, due to losing a quorum the meeting had to be canceled. She also stated the property ownership has changed since then, so meeting notices were re-sent with both the previous owner's and the new owner's names. Visuals of the agenda packet were shown including the enforcement case history.

Ms. Wright asked, so they're asking for a variance for it being 2.5 ft. from the property line?

A. Landers stated the eave encroaches more than that, so the eave is 2.2 ft from the property line, and they are asking for a 0.3 ft. eave variance. They are also asking for a 13.4% rear yard coverage variance and a 5.6% impervious surface lot coverage variance for the patio work and the eave encroachment is for the pergola.

Ms. Wright asked how much area is 5.6% impervious surface.

A. Landers stated when you go to page 2 of the staff report, the proposed maximum impervious surface coverage for a parcel this size is 60%. Now with the patio work that the previous owner did, the impervious surface coverage is now 65.6% so that's why they're asking for a 5.6% variance as they are that much over the maximum allowed of the lot coverage.

Ms. Wright asked, but do we know how big of an area that is? I mean, it depends on how big the lot is, right?

A. Landers stated right, I'll have to go get a calculator if you want me to work out the math.

Mr. Patrick asked how big the lot is.

A. Landers stated the parcel size is 5,895.82 sq. ft.

Mr. Neumann asked so the application states 441 sq. ft. over, I don't know if that's accurate.

A. Landers stated no, the information that the previous owner provided was not accurate. We did not get the true accuracy until the survey had been submitted for this request.

Mr. Neumann asked staff, do we know if the current impervious surface is larger or smaller than the previous patio?

A. Landers stated larger.

Mr. Neumann stated there is more impervious surface than the previous patio by the city code the pavers would have been considered pervious, right, but stamped concrete is impervious. He stated also it is larger than what was there.

A. Landers stated it is larger. He covered more than what was there previously per the records that we have.

Ms. Hill stated it looks like on the previous patio sketch, the patio extended 18 feet from the house and the new one is 22.9 feet, and that includes the deck.

Mr. Patrick asked so the applicant tonight is a new owner of the home.

A. Landers stated during the process of last month to tonight, there is a new owner.

Megan Osorio, the new owner, stated when I purchased the home, I don't think the previous owners realized the mistake that they had made by not doing the variance.

A. Landers stated they did. We have been working with them for months.

Megan Osorio stated that they were in the process of this at the time that I purchased the home and should have been able to resolve the item before closing on the home, and that did not happen, so they have now moved downstate. I am now residing in the home.

Mr. Neumann asked this may be a question for the applicant but how is the pergola attached to the concrete. Do we have an image of that?

Mr. Patrick stated I'd have to think there were some anchor bolts.

Ms. Wright stated yep, cemented anchor bolts probably.

Mr. Neumann asked what is the direction of the water that sheds off the roof concerning the neighboring property that they are requesting a variance.

Mr. Patrick stated there's a pretty big grassy area between the patio and the property behind them.

Mr. Neumann stated yeah, from the block map it does look like those are rear yards and the contours are generally sloping to the west.

Ms. Dombrowski I just wanted to state for the record that I'm one of the neighbors who was noticed in this. I don't believe I have any financial gain or stake with this decision, but I wanted to make sure I announced it.

Mr. Patrick asked if we have any correspondence from any neighbors here.

A. Landers stated we didn't receive anything per the deadline but when it's any applicant's turn to speak she has something.

Megan Osorio, 1029 2nd Street in Marquette, stated thank you for having some patience with me in this. I did upon receipt of the home or transfer of the home I found these documents so I don't even have all the documents you just reviewed but in those documents is a letter from one of the neighbors adjacent to the property expressing that they got the notification and that they were in support and felt like it added value to my property as well as their own, so they were in favor. I had no idea about any requirements to get it by a certain time, so I'm happy to share it and submit it if that would be allowed. As far as I know, at least from reading the application and probably some of the information you're familiar with, my understanding, maybe incorrect, was that the pergola, they had applied for a permit for the pergola, and at the time that they were getting the approval for that, somebody came out to review it and realized what's this patio here? And that's what triggered the need to do a variance, not realizing they had done something wrong. Maybe they did after that moment. So at least that's what I'm aware of is that they weren't aware of that either way. They did the work. I want to make sure we can do whatever is necessary to be compliant. As I read through the documents, it sounds like just based on the amount of the lot that is taken up by the shared driveway and the two garages, there is no other option or place for them to go for that patio. If they get the wrong measurements or not, I think if we were to decide not to allow it as is, I'm going to have to figure out after the purchase of a home how to destroy part of what I just bought. So ideally, that's not somewhere we're going to go but of course, I want to start off on the right foot and do things as we're supposed to. There's still a significant amount of green space both behind the house, and along the sides of the house on both sides, except where the shared driveway is, but where the water would be going still has green space there.

Ms. Dombrowski asked do you want to read us the letter and state who wrote the letter.

Megan Osorio stated sure, the letter is from Rod and Katie Mitchell, who is at 201 West Magnetic, so the property just to the right of the home as you're looking at it, said we are writing to you in response to a notification we received regarding the property of Robert and Katie Davis at 1029 2nd Street. Rob and Katie are our next-door neighbors and have seen the patio and pergola in question. It is our opinion that the improvements to their backyard are attractive and constructed in a workman-like manner that adds value to their property and ours. We support the request for variances as outlined in your letter. Sincerely, Rod and Katie Mitchell.

Ms. Wright asked what the patio is made of.

Megan Osorio stated I believe it is stamped concrete. It's like faux wood. It looks like wood, but it's just stamped concrete.

Mr. Patrick asked the staff, what if we don't grant the variance and the owner just does not tear it up and redo it? What happens then?

A. Landers stated if the owner does not remove the violation, then we would have to start sending tickets, and then if it is still not removed unfortunately it would escalate to us having to send tickets every day until they comply.

Ms. Wright asked how much would have to be cut off if you had to cut it.

A. Landers stated the 5.6% of coverage for the entire lot and for the rear yard, it's 13.4% and you're only allowed to cover 25% of the rear yard and with the garage and it's over by 13.4%.

Mr. Neumann asked have you experienced a strong rain since you've been in the home.

Megan Osorio stated it's rained a couple of times. I don't know how strong, but it has rained while I have been there and there were no issues.

Mr. Williams asked can you speak to the run-off, where is the water going.

Megan Osorio stated the yard is absorbing most of it. There is some wetness on the patio itself that within an hour of the sun coming out, dries and is gone so there is no standing water. There is no pooling of water.

Mr. Neumann stated the application spoke to changing the grade to move water away from the house which we would expect to be a good thing and keep the value of the home in shape instead of leading to problems with the foundation or silt plate, so I guess based on that and your comments, it seems like it's doing its job of keeping the water away from the stretcher itself.

Chair Dombrowski opened the public hearing. No one wished to comment. Chair Dombrowski closed the Public Hearing.

Ms. Hill stated I guess there are two parts. It's the coverage and then also the eave, and I'm just going to say straight up with the eave, I don't see an issue. You have 2.5 ft. and it's 0.3 ft. of the variance so that's four inches. I mean, if it was right on, I would see that as an issue. It's also pretty low. It's not high up so if the water's coming off at a fast pace, it is not shooting over the fence and at that point, if it's that hard of a rain I'm sure everyone in this area has a steep roof that's going to go shooting rain off onto someone else's property. So, I think that's something that's going to happen and very bad rain, so the eave part I would say that I don't have an issue with that, and for the yard coverage as you said, it's not a result of their actions. We're not comparing it to other lands, but I do think that having two driveways and two garages, that's kind of unique as I don't know many houses that have that, so that takes up a lot of real estate for pervious surfaces. So, trying to get around that, I don't think it's a special privilege to grant this, given the uniqueness of their lot and all the structures and pavement on it.

Mr. Patrick stated I visited it today at about 10 o'clock, knocked on the door, rang the bell, got no answer, went around the back, shook the gate, didn't hear a dog bark.

Megan Osorio stated there was a dog inside. Your lucky day, I guess.

Mr. Patrick stated I walked right in.

A. Landers stated just for you know, they signed the application so staff and board members can conduct site visits.

Mr. Patrick stated you would never know if there was a problem with this. If the homeowner invited me over to have a beer on the patio, I would not say oh man, you're all over the place with this. No, it looks fine to me and in a situation in the back, there's a lot of grass but still I mean we're only 13% off, there's still a lot of grass from the patio to the lot line and I don't think water is going to be a problem.

Ms. Hill stated yeah, and it's within the setback so it's not like over on coverage and over in the setback. So, I still see quite a bit of grass in there for places to put snow, and as you said it's done nicely. It's nicely even. It sheds water away from the house.

Mr. Neumann stated well some of the other standards, (5)(f), strict compliance is unnecessarily burdensome in this case, requiring a homeowner to cut off part of the concrete and relocate the improvement. It could be argued as being burdensome, unnecessarily burdensome for sure. It's unfortunate when it's an after-the-fact variance. It's a real challenge with these things. (5)(h) Impact, we heard a comment I guess from the neighbors as far as not feeling that there was an impact, that would be the side of the property that I'd be most concerned about and I guess as a neighbor commenting that they don't believe that there will be an impact, now whether there ultimately will be, we can't say for now, but it does seem to not have an undue impact on neighbors. It's as you say within four inches of satisfying the code with the eave anyway and shedding water to the west side. In this case, with an after-the-fact, it seems this is the minimum necessary which meets (5)(i) that would provide a reasonable use of the property and not require an unnecessarily burdensome change to what's going on there.

It was moved by Ms. Wright, seconded by Mr. Patrick, and carried 6-0 that after conducting a public hearing and review of the STAFF REPORT/ANALYSIS for 03-VAR-06-23, the Board of Zoning Appeals finds that the request demonstrates the standards found in Section 54.1404(B)(5)(a. through j.) of the Land Development Code and hereby approves 03-VAR-06-23 as presented.

04-VAR-07-23 – 401 W. College Ave. (PIN: 0410690): Randall Maxwell and Mandy Eastley are seeking a 12-in front lot line variance from the City of Marquette Land Development Code to allow a 1-ft x 9-ft concrete step located at 401 W. College Avenue.

A. Landers stated the Board of Zoning Appeals is being asked to review an application for a 12-in front lot line variance from the City of Marquette Land Development Code to allow a 1-ft x 9-ft concrete step located at 401 W. College Avenue. Visuals of the agenda packet were shown including the enforcement case history.

Ms. Wright asked can you pull up a picture of the step on the screen.

Mr. Patrick asked to see the previous step photo.

Ms. Dombrowski stated that originally there were steps, correct. A. Landers indicated on the picture the sidewalk and step down from the sidewalk.

Ms. Wright asked if that was over the line.

A. Landers stated you're allowed to have sidewalks into the right-of-way, you cannot have steps. So, if anyone is going to reconstruct steps, they have to get a license with the City Commission and have to get approval if they're asking to put steps in the right-of-way, but they prefer that you push the steps back. They changed the code to allow for steps to encroach closer, they are now allowed be 12 inches to the front property line. Steps used to have to be 5 ft. away.

Mr. Patrick have you got the picture that goes with Mr. Lichty's Exhibit A?

A. Landers stated yes. The picture was shown.

Mr. Neumann asked what the building code says about the height of the steps, and the current construction as those are minimal rise.

A. Landers stated that'd be a question if their contractor is here to answer that. We do not deal with the building codes portion of it.

Mr. Williams stated yeah, I just wondered if you or Dave knew what would be required in an outdoor space like that that's not too high.

Ms. Hill stated it's deceiving because of the different colors but they look about the same proportion as the steep steps up to the house. I drive by this every day so since I got this notification every morning, I'm like looking and they're not that much different. Maybe a little short, but if you missed a riser, if you only did two risers, they would probably be too high.

Mr. Neumann stated right, that's what I'm wondering. If we're moving one stair and changing the pitch of the existing stairs or lowering the second step in this instance, do you still meet the code?

Ms. Wright stated I think you have to have 19 inches between your stair and riser.

Mr. Williams stated no it's like 7.5 to 7.75.

Ms. Wright stated I mean, total with the flap and the riser.

Ms. Hill you have to do it from the high end which would be the left side of this picture you have the most rise because the grade is sloping on the sidewalk so from that side, if you did two risers, I bet they'd be too tall.

Randall Maxwell, the applicant, stated my name is Randall Maxwell, and I live at 401 W. College Ave. It's my first time attending one of these. It's an honor to present in front of

you guys. Obviously, this application goes through all the nitty-gritty and the letter of the law and stuff. I did put together an additional presentation if I may.

Ms. Dombrowski stated yes, we would like to accept that.

Randall Maxwell stated that we do love these steps and as you can see our neighbors also love these steps and we're glad that he was able to come here and speak on our behalf. A few of our neighbors couldn't make it unfortunately but they have extended their support for this renovation so I present to you the top 10 reasons it would be silly to rip up our beautiful stairs because of that one front step. So, we're just going to move to reason #1: The biggest thing we would think would be obviously crucial there are no utilities in that space. When we did the retaining wall and we were digging up that spot, we can attest that there are no utilities that the city would have to access. Reason #2: When we did this renovation, as you saw, the previous step jutted out quite a bit further. We probably gave the city about 2 ft. of right-of-way back when we did this renovation and you can see on the red line there it shows you approximately where the old step was and that was in line with that fence. At the very end of that step, you can see in the bottom right-hand corner is about in line with where that fence was. So you can see it was jutting out pretty far near the site. All right, Reason #3: So this goes to the idea of redesigning the steps as a potential thing. They were talking to Scott about okay, what if we shifted all this back? Well, then the landing between the two sets of stairs is going to be too short then that wouldn't be up to code and ultimately that would be a trip hazard. So that's Reason #3. Reason #4: What if we kept the landing the same but we shifted everything back? But then you're affecting the actual foundation of the house because that top set of stairs connected to the porch is tied into the foundation of the home, and we're looking to preserve that as much as possible. Reason #5: We're looking to add value to our home. My wife's family is from here. They have loved this house since childhood and when this house came on the market, we felt very lucky to have it and so we're trying to improve the property as much as we can. And obviously the city benefits when we improve property and try to help improve the neighborhood overall and I know that our neighbors are also equally appreciative. Reason #6: This is a big one for me because I am all about the environment. This would not be very green to rip this up. It's kind of a big project and it is not an easy thing to just undo. And ultimately you are talking about a bunch of new stones. You're talking about a ton of equipment. You're burning plenty of diesel fuel. There would be a lot of carbon going into the air just to push the step back a foot which I'm not sure how much different that would be, being pragmatic. Reason #7: We have tried to comply with this. We really tried our best and we had extensive dialogue with the zoning office when we were putting in the retaining wall we did ask for an on-site consultation, and we were denied that. It was also, to be fair, I think it was also the height of the mystery days of COVID. It was like the summer of 2020. I don't know if maybe on-site consultations weren't really provided at that time, but we thought we were playing it safe and actually, it turns out we were an inch and a half over the property line and then additionally I guess the step had to be a little bit further back. Reason #8: Financially, it would be a crazy burden to undo this. We put a lot of money into this project, like I said, trying to improve the property value of the home and we're talking about thousands and thousands of dollars for us just to redesign and rip up the current steps and redesign it. Moving on to Number #9, the steps are beautiful. We get lots of passerby's. People in the

neighborhood will just walk by and say, strangers, just saying how much they appreciate what we're doing with the property and how beautiful it looks. So, it just seems like it would be a deterrent to the neighborhood, to work on your property and improve your home. So, lastly, Reason #10: That bottom step is easily removable. If the city ever needed to get under there for whatever reason we could pull it up. It's not tied into the retaining wall. So, at a moment's notice, if it was necessary we could take it up. So, that's pretty much it in a nutshell. That's what I see as the pragmatic reasons why- it wouldn't hurt just to let this step stay where it is. So, I appreciate your guy's time, and thanks so much.

Ms. Wright asked did you replace the sidewalk, too, like everything? Just the steps?

Randall Maxwell stated that herringbone, that walkway, that is us, but not the city sidewalk.

Ms. Dombrowski asked this isn't a part of the variance but why did you guys decide to put in a retaining wall?

Randall Maxwell stated that just to upgrade the property. Previously it had a lot of shrubs, kind of unruly shrubs surrounding the property and a weird chain that was roping across the front lawn on the left-hand side, and on the right, there was this rickety gross fence and a bunch of tall trees and so we wanted to spruce it up and the retaining wall gave us the ability to level out the property and it used to have kind of big sloping hills, but we just thought it was the right kind of facelift for the property and so far, we're very happy with it and hoping to keep as much of it intact as possible.

Ms. Wright stated it looks like you got a lot of privacy out of it, too, didn't you?

Randall Maxwell stated a decent amount, yes.

Ms. Hill stated the retaining wall and the second step are within the setbacks of the right-of-way or complaint so it's just the bottom step.

Chair Dombrowski opened the public hearing. No one wished to comment. Chair Dombrowski closed the Public Hearing.

Ms. Hill stated this meets (5)(g) substantial justice, reduce relaxation the stairs are removeable. This meets (5)(f) strict compliance as this would be unnecessarily burdensome to make them tear it out, to remove the step and try to redo the stairs, and push stairs back could mess up the foundation. This meets (5)(i) as this is a minimal request. It seems like all of the neighbors are in support of this.

Ms. Dombrowski stated there was a previous step that encroached into the right-of-way from the picture and it looks like this is better as it is further away from the City sidewalk than it was before. This meets (5)(b) being on a corner lot on a busy intersection, anything that can give you privacy in your yard as people would cut through your yard so this would explain why the retaining wall and the need for the new steps. This meets

(5)(a) as there is uniqueness on the lot to where the steps are and how the house faces, and like that this step is further back than the previous step.

Ms. Wright stated that is also the minimum you can have between the first landing and the steps which is 3 feet before you can change the risers for your steps.

Mr. Patrick stated it was his understanding that you are supposed to comply with all items a-j in order to receive a variance, and a couple of them would be a stretch, none the less I will make a motion if no one else wants to.

It was moved by Mr. Patrick, seconded by Ms. Wright, and carried 6-0 that after conducting a public hearing and review of the STAFF REPORT/ANALYSIS for 04-VAR-07-23, the Board of Zoning Appeals finds that the request demonstrates the standards found in Section 54.1404(B)(5)(a. through j.) of the Land Development Code and hereby approves 04-VAR-07-23 with the condition that license approval from the City Commission is obtained for the encroachment into the right-of-way.

02-CAN-07-23 – 421 E. Hewitt Ave. (PIN: 0370650): Shelley Brandow is seeking an expansion of a Class A Non-conforming Use Designation for the existing duplex by removing the existing roof and changing the roof style to be gable with dormers and increasing the square footage of the livable area for one of the units at 421 E. Hewitt Avenue. This existing legal non-conforming duplex in the MDR zoning district is legal non-conforming due to not having a Special Land Use permit for the duplex use, does not meet the required 10-ft side yard setback on the West side, and is deficient in parking.

A. Landers stated the Board of Zoning Appeals is being asked to review an application for an expansion of a Class A Non-conforming Use Designation for the existing duplex by removing the existing roof and changing the roof style to be gable with dormers and increasing the square footage of the livable area for one of the units at 421 E. Hewitt Avenue. This existing duplex in the MDR zoning district is “legally non-conforming” due to not having a Special Land Use permit for the duplex use, and it does not meet the required 10-ft side yard setback on the West side, and it is deficient in parking space allocation. Visuals of the agenda packet were shown including the enforcement case history.

A. Landers read correspondence from Charles Tobin-LaVoy who resides at 423 E. Hewitt Ave and was in support of the request.

Ms. Wright asked can you explain to me the parking that would need to happen to be compliant.

A. Landers stated back when the curb cut was put back in, the code allowed for two driveways on lots that were less than 100 ft. wide. Code has changed now. The previous property owner only applied to have the city put the curb cut back in which the permit was attached to the agenda packet. They said that the property owner had to

apply for another permit to do the driveway. The property owner never did. The code changed. Now this driveway has been added illegally without a permit and we wouldn't even be able to grant a permit unless the driveway on the west was removed, which is why you saw is there that we gave the applicant two options of what she can do to conform. If she wanted to keep the driveway to the east, the gravel driveway that was done without a permit, she would have to remove the concrete driveway on the west but due to there being a garage back there, she did not want to remove the concrete driveway on the west because she wants to have access to the garage back there. So currently the last letter from our attorney to hers is stating that she needs to comply. Otherwise, again, the same question that was asked previously, we would have to start sending tickets. Per the correspondence from the City Attorney the work removing the illegal driveway needs to start by July 12th with the work to be completed by August 1st.

Ms. Wright asked which one is the illegal one.

A. Landers stated the gravel driveway on the east side.

Ms. Wright stated that she doesn't want to get rid of that because it was the garage.

A. Landers stated no, the concrete one.

Ms. Wright stated ok, the concrete that runs to the garage.

A. Landers stated so as you see here on the screen, this is the existing driveway and then illegally gravel was added here. And this is what we're saying that needs to be removed.

Mr. Patrick asked is this a duplex now?

A. Landers stated yes.

Mr. Patrick asked and being a duplex, they need parking for two cars.

A. Landers stated a duplex is required to have four parking spaces. We did just recently change the code because when we were meeting with the applicant, she was asking the question of why can't duplexes have front yard parking, and then we brought that question to the Planning Commission including the issues of not wanting a lot of hard surfaces on properties. Not wanting duplexes to have parking in the front yard was just an aesthetic thing, so the Planning Commission decided to remove that and allowing for parking in the front yard, and the requirement change/Land Development code amendment was approved by the City Commission.

Mr. Patrick asked so am I correct that if they just used the concrete driveway, there would be room for four cars to park in a row?

A. Landers stated no, see on the screen here that's the neighbor, so this is hers right here. This is one single parking spot here and if she decided to apply for a permit to widen it, she could get another parking space.

Ms. Wright stated but you would have to remove the trees.

A. Landers stated for widening, I believe the trees are right-of-way trees because it is in front of the sidewalk. So, her property, she can widen it on her property and get another parking space, not widen the curb cut, widen the driveway.

Ms. Wright stated I'm looking at the logistics of that in the photo.

Mr. Williams asked so that's by right she can do that now?

A. Landers stated she can apply for a permit for that now.

Mr. Williams asked without any additional administrative changes.

A. Landers stated now that the code has recently been changed.

Mr. Patrick asked can they not drive up that driveway into the garage.

Ms. Dombrowski stated it's too narrow.

A. Landers stated you're going to have to talk to the applicant about that. I don't know if she currently has an easement cause yes, she will have to go onto her neighbor's property to get back there but that would be a question for her once you're done asking any questions of staff.

Mr. Neumann stated I have a question, so to meet the requirement for cars, and I know of course we have two driveway or curb cuts, the lot that's narrower than that's allowed, but theoretically, you could stack three cars down the east side of the house if approved, is that true?

A. Landers stated that was one of the things that we discussed. If the applicant removed the west driveway, she could keep the east driveway with some expansion up towards the side of the house, she could possibly get four parking spaces in there.

Mr. Patrick asked two by two or four in a row.

A. Landers stated it would be stacked.

Mr. Patrick stated so if you've got to get out, it's a Chinese fire drill.

A. Landers stated she could probably look at widening because the ordinance changed as well to allow for duplexes to cover 40% of the front yard and it used to be 30%.

Ms. Dombrowski stated that the front yard is not very big and those two big trees right in front are just right next to each curb cut.

Ms. Hill stated that if the previous owner had gotten just the curb cut, he never put a driveway in.

A. Landers stated if he had put a driveway in then that would have been a legal, nonconforming driveway, but no driveway was put in.

Ms. Wright stated that he was using it as a driveway, he just didn't have gravel or concrete.

A. Landers stated it was just grass so it was not legal.

Mr. Patrick asked if there was on-street parking there.

Ms. Wright stated yes, there's on-street parking.

Mr. Patrick asked in the winter, too.

Ms. Wright stated no.

Ms. Dombrowski asked that whoever owned it before, there is the curb cut there, correct, they just didn't pave a driveway.

A. Landers stated yes, they just didn't, so if she kept the driveway on the east side, and got rid of the driveway on the west, bringing it into compliance she also has to add concrete into the right-of-way area and then she can have the compacted gravel after the sidewalk.

Ms. Hill asked when did the gravel go in on the nonconforming? Cause right now in the pictures there's a pickup truck on that one side and that's all it looks like it's gravel. There's grass growing kind of up between but there is gravel there. That's not dirt.

A. Landers stated yes, that's the driveway that we are talking about that was placed illegally.

Ms. Hill asked but the parking is something additional to what they're asking for here, correct?

A. Landers stated in one respect you're not looking at it unless but except for the violation that we have open. So, what you're looking at is there's one legal parking space right now and she's asking for an expansion of a Class A.

Mr. Patrick asked so if they elected to have the gravel driveway or modify it or pave it or whatever, then the one on the west side would have to be torn out.

A. Landers stated correct.

Ms. Wright asked if you had it on the right side, you'd be able to park in the back.

A. Landers stated if she wished to expand the gravel, she'd have the room there to expand it.

Ms. Wright asked and because it's impervious because it's gravel, you wouldn't have to worry about how much space you're taking up in the back of the yard.

A. Landers stated with gravel you don't have that rear yard coverage requirement as it is only for concrete and asphalt.

Mr. Neumann stated there's that little stoop though, the little entrance on the side, I don't think you'd be able to go all the way back.

Mr. Wright asked you can't get into the back of the yard?

A. Landers stated no, going along from here, though, she probably has I think at least three parking spots. But again, this would have to be concrete in the right-of-way. You'd have to bring it up to code here and remove the concrete from here.

Ms. Dombrowski asked can you explain why they can't have two?

A. Landers stated the code states that you are only allowed to have two driveways and two curb cuts, if you have to have a 100 ft. wide lot. This is not a 100 ft. wide lot.

Mr. Neumann asked but we're not considering a variance for that.

A. Landers stated you can't because she couldn't even apply for a variance from that because that's not only in our Land Development Code, but the City Code and you cannot get any variances from the City Code. So, the only reason we're telling you guys this tonight is because usually when you look for expansions for duplexes, you're asking about parking so usually you have asked how many bedrooms they have, and then you want to know how many parking spaces they have. Well, legally, right now she has one concrete parking space and we're dealing with the enforcement case for the illegal placement of the gravel.

Mr. Neumann asked if she had to remove the driveway on the west, would she have to also close the curb cut up to the neighbor's line.

A. Landers stated no because the Engineering department said that she would just have to cut the concrete out to allow for the flare so she would cut it here and cut it out that way. The applicant would not have to close the curb. Visuals were shown to explain this.

Ms. Hill asked if the shared driveway with the other neighbor.

A. Landers stated it's a shared curb cut.

Ms. Wright asked what kind of variance are we looking for with the 3rd floor.

A. Landers stated you're looking at an expansion of Class A. So, in our code now, our code allows for two families structures and uses to be automatically Class A. The applicant wants to expand the living area so now she is coming to you to ask for an expansion to allow for that third-story expansion of a livable area.

Mr. Patrick asked if it is legal as a duplex now with the parking situation.

A. Landers stated it's Class A legal, nonconforming with the one parking space, as it is now, so with the expansion request the board is reviewing the code with the expansion request of the legal parking that she has.

Mr. Patrick stated if she hadn't decided to modify the roof, she just replaced the roof exactly as it was, then she wouldn't be here tonight.

A. Landers stated and wasn't expanding the livable area, then you are correct. She can do an exact replacement of the roof and no livable area expansion and would not have to request an Expansion of a Class A from the Board of Zoning Appeals.

Mr. Williams stated she would still have the driveway problem.

A. Landers stated yes.

Shelly Brandow, 421 E. Hewitt, the applicant stated when I purchased this home, it was sold to me with four plus parking spaces and there was no disclosure of it being nonconforming in any sense of the word. So, I assumed that I have four parking spaces and so when I moved in, the renter from upstairs at the time was parking on the grass and I was parking on that parking pad. It's not a driveway. It's a parking pad. And it's off of the neighbor's driveway. So, people have been parking there for 40 years and so when I had the fire department come in and do their thing because I'm a new homeowner and you have to redo all that, I got something back and it showed my pictures. I had to draw the driveways. And so it said on their grass, not legal parking. So, I looked up the code and I saw that crushed stone would suffice as a hard surface, so I, on my own, tore up all that grass and bought the crushed stone and put out a beautiful driveway, and then turned it into almost a path that goes around the house and have a beautiful fence. It has that gorgeous little porch off the back side of there, so there's a fence. There's a pathway. There's that porch. I would have to get rid of all that. And I don't know why I would have to put cement there. It qualifies but for me, it's like I want to live there, like this is my home. I'm not coming in from Chicago, buying it, and renting it out for a million dollars. I'm living there. So I lived in the downstairs unit, redid it, moved and switched with my renter and I moved upstairs. The third floor is going to be my Master Suite, my dream, and I want to be able to see the lake possibly. This house is set back differently than all the other houses and there's a possibility that I could see it that way and that really excites me and so I'm not adding any more people. And yet I have two cars and my renter has one car, but she could get married or I could rent to someone else that has two cars. I don't know what I would do. So, even though this has all been used for parking for 40+ years, I have affidavits. This is a reason I got a lawyer because I'm like I don't know what else I could possibly do. Obviously, my neighbors on that side love that gravel drive. The parking has been there for I don't

even know, I think that one of my renters said that he lived there for 15 years and he said that was once gravel, that little parking space. So, because the prior owner did not put in a hard surface, now I'm being told that the hard surface I put in so that we could park vehicles there appropriately and so that the watershed and all that would be better than doing that on grass. Now I have to either rip up all that work, which makes me want to cry, and/or rip up a perfectly good parking pad, and then put grass back down and then park there because it's been happening for 40 years. No one has reported, and in all my affidavits, no one has ever gotten a ticket. I asked for anything they had. They were going to ask for any paperwork you have saying that this is nonconforming. I don't have anything that says it's not conforming except when I came here to talk to Andrea, we were going to fill out the variance application, because Andrea didn't know that it was nonconforming until she went to David, I believe, Dave, and found that out and then she said oh now you have to fill out the nonconforming A and then you have to fill out the nonconforming A expansion, or no, it was B at the time. And then good news, a month later, it's nonconforming A and I'm like great. So, for me, it's been a very frustrating process because when I moved into this place it was falling apart, like the landlord, I'm not going to say a slum landlord, but what I am going to say is they fixed things as they broke. So, they piecemealed everything and they never replaced the roof after that big storm with hail. I'm sure he took the insurance money and did something else with it. And so, the front porch was leaning four inches. I had that shored up. I improved on that. It has a new roof or new shingles. I love this home and I've been doing everything I can to approve it. I've never heard anything but good things from the neighbors. So, I'm just I guess my recommendation is that we grandfather it finally because it should have been grandfathered in the first place.

Mr. Patrick stated this here looks steep to me.

Shelly Brandow stated no it's not steep.

Mr. Patrick stated the pickup truck got up there.

Shelly Brandow stated yeah it's not steep.

Mr. Patrick asked would your old car?

Shelly Brandow stated the old car is usually parked there.

Mr. Patrick asked and it'll go up without hitting gravel?

Shelly Brandow stated that the old car only comes out in the summer so that car is usually parked on that side because it looks nice there and my neighbors love it.

Ms. Dombrowski stated that currently there's a garage in the back, but it's not a drive-up garage.

Shelly Brandow stated no, my intention was never to be able to drive up to that garage, not to access it. Yeah, it's a carriage house. I mean, that car is stored there so it goes in once a year and comes out once a year. But otherwise, I just access it down the

neighbor's driveway because there are rocks down that, but I had rocks delivered, the wrong rocks delivered, and so I decided I'm going to spread that rock there, use it as like better drainage and then put it in the garage, which I've been digging out 4" of the dirt floor in the garage which I did last summer at the left-hand side to park the car in there so it doesn't get gross, and now I'm doing it to the other side, digging out 4" and I intend to do the same thing. It would cost more to take it back. And so then they brought me the crushed stone that I wanted because I was making everything look a little bit better. I also did like a walkway across the front there, so you could go to each parking spot.

Ms. Dombrowski that the point of expanding your house currently is to keep still two units, correct?

Shelly Brandow stated yes, the upstairs unit will be two stories, and the second bedroom now will actually end up being an office so it'll still be like two bedrooms. I'm sure you could consider it a third, but there's no closet in that room. So, it would still be considered two bedrooms.

Ms. Wright asked if you took a porch off on the east side, that little porch, could you drive in the back yard then to help parking spots?

Shelly Brandow stated probably but it wouldn't be much room and that porch has the coolest steps ever.

Ms. Wright stated that are original to the house.

Shelly Brandow stated I know that there are standards for that as well.

Ms. Wright stated oh because you're so far back, right.

Shelly Brandow stated, yeah, I mean here's my thing. I have made that backyard gorgeous, and I still have more things that I'm going to do with it, so I don't want to have a parking lot in my backyard. I live there. As I said, if I was from Chicago and I bought this place and I was going to rent it all out, sure, like put a parking lot in the back yard. It doesn't affect me. But this is like my life and I love this house and I want to provide nice housing for my renters. I don't mind being a slum lord. I want to take care of it. When I moved in, I requested that they take care of the knob and tube, and the asbestos in the basement, rewrap it, because of the safety, things that were going on, and the rent was so low I'm sure because of the things that were going on in this house. I thought it was scary.

Mr. Neumann asked, question, so you don't have an easement to use the neighbor's driveway currently?

Shelly Brandow stated no, not that I know of but anything could be going on. I have no idea. I was told that it's an illegal driveway and I had no clue that I should have filed for something, even though I thought it was already a driveway. And I guess what

frustrates me is that we're talking about this. When I want an extension of the third floor and the only thing that's not meeting that is the foot on the east side?

A. Landers stated your parking doesn't meet the duplex requirements and the 10 ft. setback.

Shelly Brandow stated right, but the reason why I had to ask for the expansion originally was because of that one foot and so I've hired a lawyer and we're trying to work with the lawyer to figure out the parking. In the meantime, I would like to replace my roof before this winter. And so I would really like to be able to do the doors and all that because that's not going to get in the way of figuring out the driveway. So for me to rip out the driveway and then find out oh, now we've changed the code and you can have two- you know what I mean? This should have been grandfathered a long time ago and it's so frustrating to me because I moved in thinking that there were four plus parking spaces. I recognized that there weren't "plus" but I thought there were four.

Chair Dombrowski opened the public hearing. No one wished to comment. Chair Dombrowski closed the Public Hearing.

Mr. Neumann stated for standards (b)(i-iv), continuation would not be contrary to public health, safety, or welfare, or to the spirit of the ordinance. I believe this request satisfies that standard. The use of the structure is not likely to simply depress the value of your properties, no this is an improvement for sure. The use or structures was lawful at the time of its inception, that's yes, that's true. That's satisfied, right? I maybe have a question for the staff on that. The use or structures so it's nonconformity which means it's legal. That's what that word means.

Ms. Wright stated and we have no idea when the inception was.

Mr. Neumann stated, well, the parking piece, that's a separate issue.

Ms. Wright stated then we have no clue when the structure was lawful at the time of inception. We have no clue when the inception was.

A. Landers stated it was built in 1923.

Mr. Neumann stated that the use as a duplex and a duplex only had a single legal parking space, which was lawfully done at some point in time.

A. Landers stated right.

Mr. Neumann stated okay, so that's what our concern is right there, and before, no useful purpose would be served this strict application of the original appearance of the ordinance. Strict compliance in this case simply prevents a change in the roof line. She can replace the roof without coming to us and improve the home. I guess the difference is just to-

Ms. Wright stated to improve it a little more.

Mr. Neumann stated yeah, there's an expansion of the livable space. I think as we're concerned, the parking issue is another is another problem to solve but I don't think it's our problem tonight.

It was moved by Mr. Neumann, seconded by Ms. Hill, that after conducting a public hearing and review of the STAFF FILE REVIEW/ANALYSIS for 02-CAN-07-23, the Board of Zoning Appeals finds that the request demonstrates the standards found in Section 54.1202(B)(1)(b)(i. through iv.) of the Land Development Code and hereby approves 02-CAN-07-23 with the following condition that the parking situation be resolved as amicable to the applicant and the City.

Ms. Wright asked does that mean the applicant will be able to start the construction now.

D. Stensaas stated not until the parking violation is removed.

Mr. Neumann asked staff to clarify why expansion cannot take place.

D. Stensaas the expansion is one thing, the illegal parking driveway that was created cannot stay as it is a violation of City Code and the Land Development Code. It is going to have to come out and the applicant will have to work on the other side of the house if she wants a driveway to accommodate three vehicles for her two cars and the renter.

It was moved by Mr. Neumann, seconded by Ms. Hill, and carried 6-0 that after conducting a public hearing and review of the STAFF FILE REVIEW/ANALYSIS for 02-CAN-07-23, the Board of Zoning Appeals finds that the request demonstrates the standards found in Section 54.1202(B)(1)(b)(i. through iv.) of the Land Development Code and hereby approves 02-CAN-07-23 with the following condition that the parking situation be resolved as amicable to the applicant and the City.

BOARD MEMBER COMMENT

Ms. Wright stated that it would be nice to have the calculations when reviewing percentage variances. A. Landers stated that she would request the calculations from the surveyors so they would have that for the next time.

ADJOURNMENT

It was moved by Ms. Wright, seconded by Mr. Patrick, and carried 6-0 to adjourn the meeting at 8:39 p.m.

Respectfully Submitted,

Andrea Landers

Andrea Landers
Zoning Official
Community Development Department,
For the Board of Zoning Appeals
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