



**VILLAGE OF PENTWATER
Zoning Board of Appeals**

65 South Hancock Street – P.O. Box 622
Pentwater, Michigan 49449
(231) 869-8301

**Regular Meeting Minutes – October 17, 2023
Park Place - 310 N. Rush St., Pentwater, MI 49449**

Chairperson Bainton called the meeting of the Pentwater Zoning Board of Appeals Meeting to order at 6:00p.m. with the Pledge of Allegiance.

ROLL CALL: **Present:** Bill Bainton, Lisa McKinney, Nancy Ceton, and Jim Young.
Absent: None

Others present: Zoning Administrator, Katie Anderson.

APPROVAL OF AGENDA:

Motion by Lisa McKinney, second by Nancy Ceton to approve the agenda as presented.
Voice Vote: Ayes: 4 Nays: 0 Absent: 0 **Motion carried.**

APPROVAL OF MINUTES of August 1, 2023:

Motion by Nancy Ceton, second by Lisa McKinney to approve the minutes of August 1, 2023.
Voice Vote: Ayes: 4 Nays: 0 Absent: 0 **Motion carried.**

PUBLIC COMMENTS (Items on the Agenda): None

UNFINISHED BUSINESS: None

The Public Hearing was opened at 6:03pm.

**PUBLIC HEARING: 523 E. Fourth St. (Parcel ID No. 64-044-725-001-00)
212 W. Lowell St. (Parcel ID No. 64-044-425-003-50)**

The Kress residence, 523 E. Fourth St., is located on the south side of undeveloped E. Fourth St., west of Morris St., and east of vacated Ellery St. The property is a 10,890 sq. ft. (66' x 165') lot with the 165 ft. being the roadside frontage. The applicants seek a 20 ft. rear yard setback variance. In accordance with Section 6.04.E, R-2 District Regulations, Rear Yard Setback requirements are 30 feet from the lot line.

The Perles residence, 212 W. Lowell St., is located on the northwest corner of Lowell St. and Plymouth St. The existing property is approximately 8,379 sq. ft. with 63.48 ft. of road frontage along Lowell St. The applicants seek a 12.3 ft. front yard setback variance. In accordance with Section 6.04.E, R-2 District Regulations, Front Yard Setback requirements are 17 feet from the lot line. Where the applicant seeks to be within 4.7 ft. of the front lot line adjacent to Plymouth St. The applicants also seek an additional 156 sq. ft. of accessory building above the 720 sq. ft.

that is permitted in accordance with Section 3.08.D.1.a “For lots of ten thousand (10,000) square feet in area, or less: seven hundred and twenty (720) square feet GFA (Gross Floor Area) of accessory building is allowed.

PUBLIC COMMENTS (Public Hearing):

Six letters were received prior to the meeting in regard to 212 W. Lowell St. – Three in support of the variance and three opposed.

No comments were received in regards to 523 E. Fourth St.

Claude Peyrot – 181 N. Plymouth St. – I want clarification on the accessory building. The accessory building is not a separate building it is an attached garage and I was looking for clarification as to why it is called an accessory building.

Katie Anderson – Zoning Administrator – Gave comment clarifying Mr. Peyrot’s question.

John Perles – 212 W. Lowell St. – I appreciate your time and the efforts the Board puts forth in these types of proceedings. I read through the letters as well, and I think there were some questions about the accessory building and it not being understood that it was a garage. I think that caused some confusion in reference to the accessory allotment variance. I think there is also some confusion with the traffic on Lowell, as you know it gets busy during the summer months. Our access would be on Plymouth St. as far north on Plymouth to alleviate some of the traffic issue. We also wanted to situate the property as far north and west as possible to maintain the sight lines coming down Plymouth, there are still people that live there and it would maintain the same sight line that is there today with the other properties on Plymouth. Additionally, it helps us provide green space to the neighborhood. The other point I would like to make is Plymouth St. is 16 feet wide. The setback is 33 feet from the middle of the road, if you go from the middle of the road where the grass starts, its 8 feet. We still need to satisfy the 33-foot right-of-way, there is still 25-foot setback from the grass. In addition to that, Plymouth St. is considered a front yard, it requires another 17 feet from the lot line. So, 25 feet plus 17 feet ends up being a total of 42 feet from the edge of the road, if we were to follow the Zoning Ordinance fully. Our lot is also narrower than what you would typically find in the Village. Thank you for your time.

Claude Peyrot – 181 N. Plymouth St. – I would like to amend my previous statement, I support the change to allow the Perles to do the new construction. I neglected to do that earlier.

Bill Bainton asked the Perles if the plan that was in the packet was an accurate plan of their proposal, both the house plans and the site plan.

John Perles – Yes, you will see on the site plan that the garage and driveway are as far north on Plymouth St. as possible to maintain sight lines on Lowell St.

The Public Hearing was closed at 6:18pm.

NEW BUSINESS:

A. Variance Request for 523 E. Fourth St. – 20 feet rear yard setback variance.

Discussion: (Members reviewed Section 18.08 Review Standards for Variances)

A. **First Standard** – Practical Difficulty or Unnecessary Hardship. The applicant shall demonstrate that the circumstances constitute **either** a practical difficulty (the standard for a non-use variance) or an unnecessary hardship (the standard for a use variance), as follows:

1. Dimensional (Non-Use Variance). A non-use or dimensional variance would permit the modification or waiver of a non-use zoning regulation (such as minimum requirements for setbacks, lot width, lot area, building separation, or other dimensional regulations that do not alter the fundamental type of building or use permitted).

For a non-use variance - the First Standard will be satisfied only if the Zoning Board of Appeals finds that a “**practical difficulty**” exists that prevents compliance with the non-use zoning regulation. A practical difficulty exists when there are exceptional or extraordinary circumstances or conditions applying to the property (such as exceptional narrowness, shallowness or shape of the property, topographic conditions, conditions caused by the use or development of the property immediately adjoining the property in question), where such practical difficulty would unreasonably prevent the owner from using the property for a permitted use or would render conformity unnecessarily burdensome.

--or--

2. Use Variance. A use variance permits a land use that is not otherwise permitted in the relevant zoning district.

For a use variance - the First Standard will only be satisfied if the Zoning Board of Appeals finds that an “**unnecessary hardship**” will exist as to the applicant’s land if the requested use is not permitted. An “unnecessary hardship” exists when the property, as a whole, cannot be put to a conforming use because the applicant has demonstrated that the land cannot yield a reasonable rate of return when used for a use that complies with the ordinance.

Comment: All agree, that a practical difficulty of extraordinary circumstances is viable for this case.

B. **Second Standard** – Special or Unusual Circumstances. The circumstances creating the need for the variance must be peculiar to the land, structures or buildings involved and shall not be recurrent or applicable as to a sufficient number of other lands, structures, or buildings in the same zoning district, to a degree that the ZBA concludes that a general zoning ordinance amendment would be more appropriate.

Comment: All agree, there are unusual circumstances in regards to the land involved.

C. **Third Standard** – Substantial Justice. The Zoning Board of Appeals should find that strict application of the ordinance provisions would deprive the applicant of property rights that are commonly enjoyed by other properties in the same zoning district.

Comment: All agree, not granting the variance would deprive the applicant of property right that are commonly enjoyed by other properties in the same zoning district.

D. **Fourth Standard** – Protecting Neighborhood Properties. The Zoning Board of Appeals shall not grant the variance if it would cause a substantial detriment or harm to other lands

and uses, or if in the judgment of the Zoning Board of Appeals, the variance would be contrary to the spirit and purpose of the Zoning Ordinance Regulations.

Comment: All agree, the variance would not cause a substantial detriment or harm to other lands and uses.

- E. **Fifth Standard** – Not Self-Created. If the Zoning Board of Appeals determines that the applicant or the applicant’s representatives were involved in any action or inaction with respect to the property, prior to the variance request, where such action or inaction created the circumstances which prompts the variance request, no variance shall be granted.

Comment: Yes, all agree that this was not a self-created issue.

- F. **Sixth Standard** – Minimum Variance Necessary. The Zoning Board of Appeals shall grant only the minimum necessary variance from current Zoning Ordinance provisions to afford the applicant the relief created by the requested variance.

Comment: All agree, only granting the 20 feet rear yard setback variance, as requested, would relieve the applicant.

- G. **Seventh Standard** – Voting. An affirmative vote of a majority of the members of the Zoning Board of Appeals is required to grant a dimensional (non-use variance). For a use variance, an affirmative vote of two-thirds of the members of the Board of Appeals is required.

Motion by Lisa McKinney, second by Nancy Ceton to grant the 20 feet rear yard setback variance.

Roll Call Vote: McKinney, yes. Ceton, yes. Young, yes. Bainton, yes. Nays: 0 Absent: 0
Motion passed.

BOARD DISCUSSION ON 212 W. LOWELL ST.

Lisa McKinney – When we are talking about the difference standards, do we ever question about how we can reconfigure the plans to fit better or do we not touch that at all?

Bill Bainton – We have asked about reconfiguring a plan. We did that on a porch variance a few years ago and asked the applicants to come up with a better plan that would be less detrimental if a variance was granted.

Nancy Ceton – Asked about reconfiguring the home to become more compliant or closer to the setbacks to grant a lesser variance, as the width of the lot is only 2.5 feet narrower than a standard 66 ft. lot.

John Perles – There are many configurations a home can take; our intent was to maintain as much green space towards Lowell St. and any redesign that would have to go back to the architect would definitely move the house closer to Lowell St. There are a number of houses on Lowell St. that are almost up to the sidewalk and we could probably do something like that but I do not think that is in the spirit of the Zoning Ordinance. We thought to be more benign to traffic, parking, and the neighbors, the more we moved off of Lowell St. and north of Plymouth St. would be in everyone’s interest.

Lisa McKinney – I understand what John and Amy (Perles) were planning with this and how they took it into consideration, I just do not know if this fits in as a practical difficulty that the First Standard is asking us to consider. Green space is nice and I agree having that corner not

having a house right up to the edge is nice but the Standards do not talk about considering what is going to be better for traffic.

Bill Bainton – The Village has talked about the Streetscape possibility on Lowell St. in that direction. I understand both sides of this with wanting your green space in the front over the back, but that is beyond our scope to determine green space. We are here to determine if their variance request fits in under these questions (Standards) and is this an extraordinary condition that prevents them from using the property to put a house of their choosing on. We are not here to determine green space placement.

Lisa McKinney – In this piece (Fourth Standard) about the spirit and purpose of the Zoning Ordinance Regulations, I have always taken that to mean regulate. Which is not always a good position to be in because sometimes you might not want to stick to those regulations every time but that is what we are supposed to do. Stick to the rules that were decided in the Zoning Ordinance.

Lisa McKinney – This one seems difficult to me (Fifth Standard) because it is self-created, you know what your setbacks are and those do not change.

Bill Bainton – I have the same kind of thinking there. You are essentially starting with an empty lot, so it would be self-created as you could fit your new home and garage to the lot with proper setbacks.

Lisa McKinney – Like it or not, however those lines (lot lines) were drawn, that is what you are given to work with when you buy a piece of property.

Jim Young – This issue is probably going to come up as more people buy a lot with a house on it and think that they should have no problem rebuilding until they start looking at all the little details of the setbacks that maybe the original house on the lot does not follow.

Jim Young – In looking at what he (Perles) is proposing versus what he is stuck with (current house on the lot), he has already made a move in our direction (to work out the layout with a minimum variance) which may not have been to his advantage to make this home fit on the lot.

B. Variance Request – 212 W. Lowell St. – 12.2 feet front yard setback and 156 sq. ft. additional accessory building allotment variance.

Discussion: (Members reviewed Section 18.08 Review Standards for Variances)

A. **First Standard** – Practical Difficulty or Unnecessary Hardship. The applicant shall demonstrate that the circumstances constitute **either** a practical difficulty (the standard for a non-use variance) or an unnecessary hardship (the standard for a use variance), as follows:

1. Dimensional (Non-Use Variance). A non-use or dimensional variance would permit the modification or waiver of a non-use zoning regulation (such as minimum requirements for setbacks, lot width, lot area, building separation, or other dimensional regulations that do not alter the fundamental type of building or use permitted).

For a non-use variance - the First Standard will be satisfied only if the Zoning Board of Appeals finds that a “**practical difficulty**” exists that prevents compliance with

the non-use zoning regulation. A practical difficulty exists when there are exceptional or extraordinary circumstances or conditions applying to the property (such as exceptional narrowness, shallowness or shape of the property, topographic conditions, conditions caused by the use or development of the property immediately adjoining the property in question), where such practical difficulty would unreasonably prevent the owner from using the property for a permitted use or would render conformity unnecessarily burdensome.

--or--

2. Use Variance. A use variance permits a land use that is not otherwise permitted in the relevant zoning district.

For a use variance - the First Standard will only be satisfied if the Zoning Board of Appeals finds that an “**unnecessary hardship**” will exist as to the applicant’s land if the requested use is not permitted. An “unnecessary hardship” exists when the property, as a whole, cannot be put to a conforming use because the applicant has demonstrated that the land cannot yield a reasonable rate of return when used for a use that complies with the ordinance.

Comment: The Board did not agree that a practical difficulty exists within the property and development of the property could be done without a variance.

- B. **Second Standard** – Special or Unusual Circumstances. The circumstances creating the need for the variance must be peculiar to the land, structures or buildings involved and shall not be recurrent or applicable as to a sufficient number of other lands, structures, or buildings in the same zoning district, to a degree that the ZBA concludes that a general zoning ordinance amendment would be more appropriate.

Comment: The Board did not agree that there were special or unusual circumstances in which a variance would be needed and the applicants could build on their property within the setback limits of the Zoning Ordinance.

- C. **Third Standard** – Substantial Justice. The Zoning Board of Appeals should find that strict application of the ordinance provisions would deprive the applicant of property rights that are commonly enjoyed by other properties in the same zoning district.

Comment: The Board did not find that strict application of the ordinance provisions would deprive the applicant of property rights and the applicants could build within the scope of the Zoning Ordinance.

- D. **Fourth Standard** – Protecting Neighborhood Properties. The Zoning Board of Appeals shall not grant the variance if it would cause a substantial detriment or harm to other lands and uses, or if in the judgment of the Zoning Board of Appeals, the variance would be contrary to the spirit and purpose of the Zoning Ordinance Regulations.

Comment: The Board found that granting a variance would be contrary to the spirit and purpose of the Zoning Ordinance Regulations and the applicants could build within the confines of the Zoning Ordinance.

- E. **Fifth Standard** – Not Self-Created. If the Zoning Board of Appeals determines that the applicant or the applicant’s representatives were involved in any action or inaction with

respect to the property, prior to the variance request, where such action or inaction created the circumstances which prompts the variance request, no variance shall be granted.

Comment: The Board did not find that the issue was not self-created and the applicants could build within the setback requirements of the Zoning Ordinance.

- F. **Sixth Standard** – Minimum Variance Necessary. The Zoning Board of Appeals shall grant only the minimum necessary variance from current Zoning Ordinance provisions to afford the applicant the relief created by the requested variance.

Comment: The Board did not agree that a minimum variance was necessary and the applicants could build within the setback requirements of the Zoning Ordinance.

- G. **Seventh Standard** – Voting. An affirmative vote of a majority of the members of the Zoning Board of Appeals is required to grant a dimensional (non-use variance). For a use variance, an affirmative vote of two-thirds of the members of the Board of Appeals is required.

Motion by Lisa McKinney, second by Nancy Ceton to grant the 12.2 front yard setback variance request and the 156 sq. ft. accessory building allotment request.

Roll Call Vote: McKinney, no. Ceton, no. Young, yes. Bainton, no. Absent: 0 Motion failed.

ADJOURNMENT: Motion by Lisa McKinney, second by Jim Young to adjourn the meeting at 7:26pm. Ayes: 4 Nays: 0 Absent: 0 Motion passed.

Respectfully submitted by:

Katie Anderson

Katie Anderson, Zoning Administrator
Village of Pentwater

October 18, 2023

Approved by the Zoning Board of Appeals on _____.