

**PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
AGENDA**

13235 Center Road
Traverse City, MI 49686
March 10, 2015
7:00 p.m.

1. **Call to Order**
2. **Pledge**
3. **Roll Call of Attendance**
4. **Approval of Agenda**
5. **Conflict of Interest**
6. **Communication Received**
7. **Public Input**
8. **Scheduled Public Hearings**

A. Request No. 842, Zoning R-1B

Applicant: Ted M. Price, 812 S. Garfield, Suite K, Traverse City, MI 49686

Owner: John F. & Susan K. Boles, 25111 Waterstone Estates Cir E., Tomball, TX 77375

Property Address: 9064 Peninsula Dr., Traverse City, MI 49686

Request: (1) a variance of 5 feet and 11 inches (5' 11") from the required 15 feet (15') side yard setback to allow for the construction of a 131 square foot covered deck addition.

Parcel Code No. 28-11-690-006-00

B. Request No. 844, Zoning A1

Applicant: Josh & Lesli Humphrey, 1101 Elmer Dr., Traverse City, MI 49686

Owner: Josh & Lesli Humphrey, 1101 Elmer Dr., Traverse City, MI 49686

Property Address: 1101 Elmer Dr., Traverse City, MI 49686

Request: (1) a variance of 14 feet (14') from the required 35 feet (35') front yard setback to allow for the construction of a covered porch addition.

Parcel Code No. 28-11-008-021-55

C. Request No. 845, Zoning R-1B

Applicant: David J. Clark, 11522 Peninsula Dr., Traverse City, MI 49686

Owner: David J. Clark, 11522 Peninsula Dr., Traverse City, MI 49686

Property Address: 11522 Peninsula Dr., Traverse City, MI 49686

Requests: (1) a variance of 6 feet (6') from the required 30 feet (30') front yard setback to allow for the construction of a 132 square foot residential addition; (2) a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage; (3) a variance of 2.7% from the required 15% maximum area coverage to allow for the construction of a residential addition and attached garage.

Parcel Code No. 28-11-467-022-00

9. Approval of Minutes

- A. November 12, 2015 Regular Meeting
- B. January 14, 2016 Joint TB/PC/ZBA Minutes

10. New Business

- A. Township Board Report (Witkop)
- B. Planning Commission Report (Wunsch)

11. Adjournment

Peninsula Township has several portable hearing devices available for audience members. If you would like to use one, please ask the Clerk.

LEGAL NOTICE

PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
NOTICE OF HEARING

PLEASE TAKE NOTICE that the Peninsula Township Zoning Board of Appeals will hold a regular meeting on March 10, 2016 at 7:00 PM at the Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686, (231) 223-7322. The following applicants will be heard:

Request No. 842, Zoning R-1B

Applicant: Ted M. Price, 812 S. Garfield, Suite K, Traverse City, MI 49686

Owner: John F. & Susan K. Boles, 25111 Waterstone Estates Cir E., Tomball, TX 77375

Property Address: 9064 Peninsula Dr., Traverse City, MI 49686

Request: (1) a variance of 5 feet and 11 inches (5' 11") from the required 15 foot side yard setback to allow for the construction of a 131 (one hundred thirty one) square foot covered deck addition.

Parcel Code No. 28-11-690-006-00

Please be advised that the public may appear at the public hearing in person or by council.

Written comment may be submitted to Peninsula Township Planning & Zoning Department at 13235 Center Rd., Traverse City, MI 49686 no later than 4:30 PM on the date of the hearing.

If you are planning to attend the meeting and are disabled requiring any special assistance, please so notify the Planning & Zoning Department at (231) 223-7322 or call TDD at (231) 922-4766.

SUBJECT PROPERTY



Peninsula Township Planning & Zoning Department
STAFF REPORT

ZBA Request #842 – 9064 Peninsula Dr.
March 10, 2016

To: Peninsula Township Zoning Board of Appeals
From: Michelle Reardon, Planning & Zoning
RE: Request No. 842 – 9064 Peninsula Dr.
Hearing Date: March 10, 2016 – 7:00 PM
Applicant: Ted M. Price, 812 S. Garfield, Suite K, Traverse City, MI 49686
Site: 9064 Peninsula Dr., Traverse City, MI 49686
Tax ID: 28-11-690-006-00

Information:

- The site is approximately 0.89 acres in size.
- The property is zoned Coastal Zone Single and Two-Family (R-1B); the surrounding area is zoned Coastal Zone Single and Two-Family (R-1B).
- The existing lot was created in 1948, prior to the adoption of the Peninsula Township Zoning Ordinance in 1972.
- There is a legal building envelope located on the lot.
- The existing legal nonconforming side yard setback is 12 feet from the deck.
- The proposed covered deck requires a side yard setback variance of 5 feet 11 inches.

Action

Requested: (1) a variance of 5 feet 11 inches (5'11") from the required 15 feet side yard setback for a 131 square foot covered deck addition.

Mailing: Twenty (20) surrounding property owners were notified. No comments were received as of March 3, 2016.

Applicant

Statement: Please see the enclosed application submitted by Ted Price, appointed representative.

Staff Comments:

Request #1.

The applicant is requesting a variance for an addition to a legal non-conforming structure.

Background

The original single family residence was built in 1948, prior to the adoption of the Zoning Ordinance. This structure encroaches on both side yard setbacks. Due to an inaccurate site plan, Staff approved an LUP in 1985 in error for the construction of the existing attached deck that increased the northeast side yard setback encroachment. Therefore, both the residential structure and attached deck are now considered legally nonconforming.

As demonstrated on the site plan, the existing northeast point of the deck is 12 feet from the side lot line.

The proposed structure conforms to relevant zoning standards for minimum lot setbacks of the front, rear, and southwest side yards, but does not conform to the minimum northeast side yard setback as demonstrated in the following table:

R-1B Standards (Section 6.8)	Required	Proposed Deck Addition	Conforms to Standard?
Maximum Height	35'	14'	Yes
Minimum Front Setback	30'	63'	Yes
Minimum Northeast Side Setback	15'	12'	No
Minimum Southwest Side Setback	15'	44'	Yes
Minimum Rear Setback	30'	275'	Yes
Minimum OHWM Setback	60'	NA	NA
Maximum Lot Coverage	25%	10.4%	Yes

The applicant requests (1) a variance of 5 feet 11 inches (5'11") from the required 15 feet side yard setback for a 131 square foot covered deck addition. The requested variance must meet the following standards in order to be granted. Specific staff comments follow the standards.

A. Section 3.2 Definition of Practical Difficulty

To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating all of the following:

- a) Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.
- b) A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.
- c) The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

B. Section 5.7.3 Variances

The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED ALL of the BASIC conditions listed herein and any ONE of the SPECIAL conditions listed thereafter can be satisfied.

- 1) Basic Conditions: That any variance from this Ordinance:
 - a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.
 - b. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.
 - c. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

- d. Is not where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.
 - e. Will relate only to the property that is under control of the applicant.
- 2) Special Conditions: When ALL of the foregoing basic conditions can be clearly demonstrated:
- a. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.
 - b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.
 - c. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.
 - d. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The subject property, zoned R-1B, was created before the effective date of the Zoning Ordinance, and is considered legally nonconforming because the lot width is less than the minimum 100 feet lot width requirement. The property width is approximately 96.83 feet. The property length is approximately 353 feet. The lot has a sufficient building envelope for the structures to be appropriately constructed.



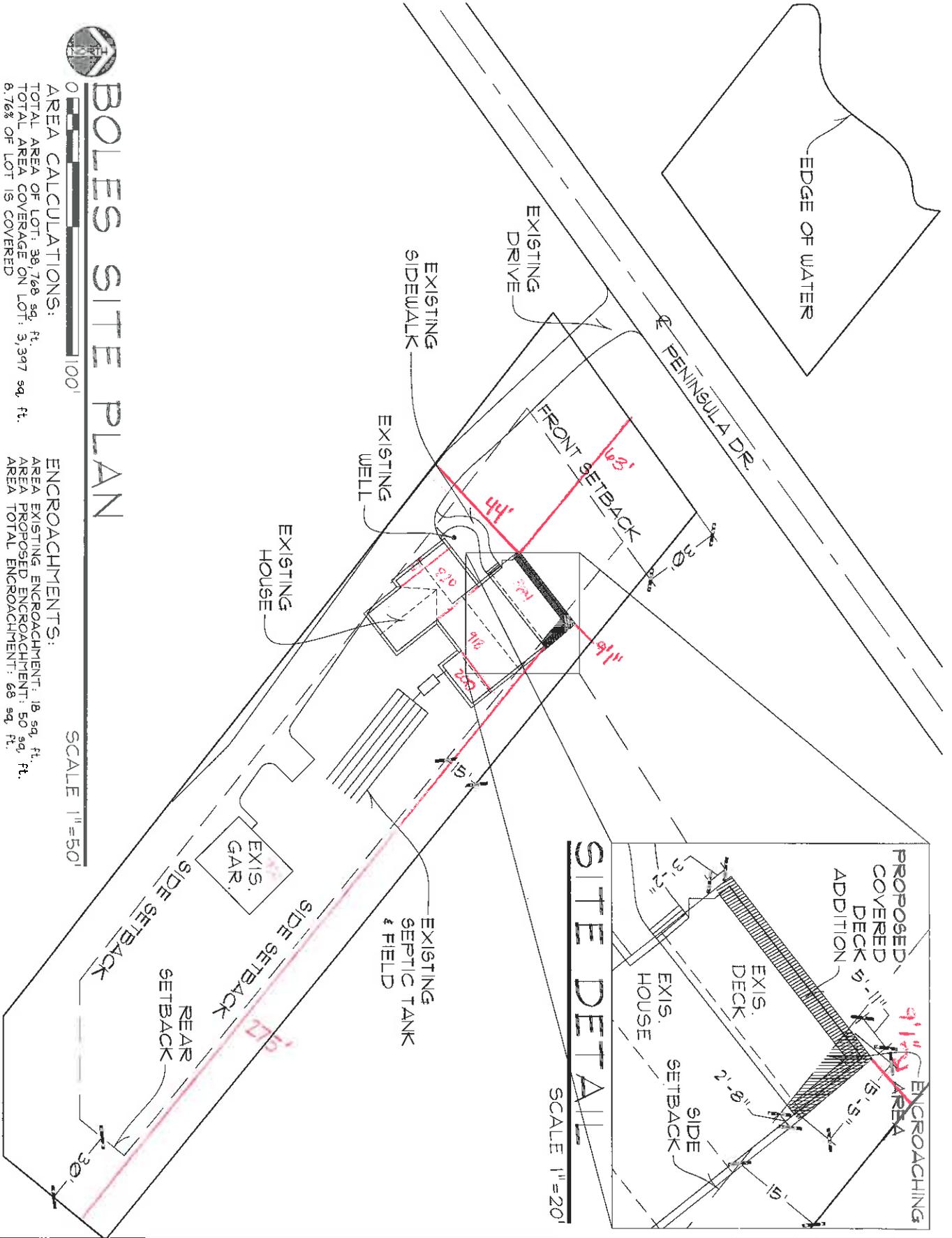
BOLES SITE PLAN



AREA CALCULATIONS:
 TOTAL AREA OF LOT: 39,768 sq. ft.
 TOTAL AREA COVERED ON LOT: 3,397 sq. ft.
 8.76% OF LOT IS COVERED

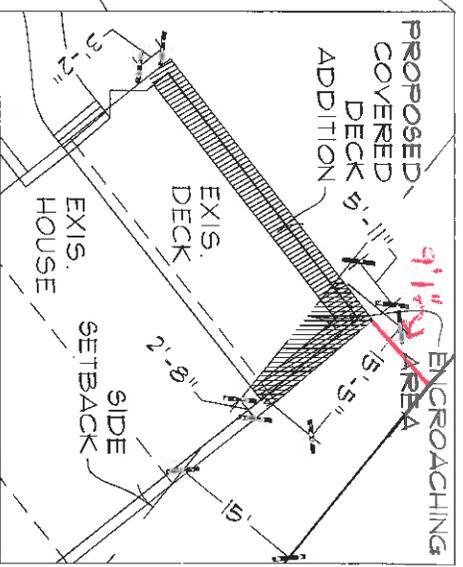
ENCROACHMENTS:
 AREA EXISTING ENCROACHMENT: 18 sq. ft.
 AREA PROPOSED ENCROACHMENT: 50 sq. ft.
 AREA TOTAL ENCROACHMENT: 68 sq. ft.

SCALE 1"=50'



SITE DETAIL

SCALE 1"=20'



<p>Cell: 231.642.7881 - caleb@norrisdesignpro.com - www.norrisdesignpro.com</p>	Project: Boles Residence 9064 Peninsula Drive Traverse City, MI 49686	Description:
	Drawn By: Caleb Norris	Date: Dec. 17, 2015

Peninsula Township Planning & Zoning Department
FINDINGS OF FACT

ZBA Request #842 – 9064 Peninsula Dr.
March 10, 2016

DECISION AND ORDER

Applicant: Ted Price, appointed representative of property owner

Hearing

Date: March 10, 2016

PROPERTY DESCRIPTION

The property of 9064 Peninsula Dr., Traverse City, MI 49686, Parcel No. 28-11-690-006-00, herein after referred to as the “property”.

APPLICATION

Request: (1) a variance of 5 feet 11 inches (5’11”) from the required 15 feet side yard setback for a 131 square foot covered deck addition.

The Board having considered the Application, a public hearing having been held on March 10, 2016, after giving due notice as required by law, the Board having heard the statements of the Applicant and agents, the Board after having considered letters submitted by members of the public and comments by members of the public, the Board having considered six (6) exhibits, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

1. The Board finds that the property is currently zoned Coastal Zone Single and Two-Family (R-1B). (Exhibits 1, 2)
2. The Board finds that the lot was platted and the residential structure was built in 1948. Both are legally nonconforming. (Exhibit 5)
3. The Board finds that the existing deck was permitted in error in 1985 due to an incorrect site plan, and is therefore a legally non-conforming structure. (Exhibits 2, 6)
4. The Board finds that the proposed covered deck addition does not conform to relevant zoning standards. (Exhibits 2, 3, 4)
5. The Board finds that the applicant requests (1) a variance of 5 feet 11 inches (5’11”) from the required 15 feet side yard setback for a 131 square foot covered deck addition.

Variance Request #1 A variance of 5 feet 11 inches (5’11”) from the required 15 feet side yard setback for a 131 square foot covered deck addition.

FINDINGS UNDER SECTION 3.2 – DEFINITIONS – PRACTICAL DIFFICULTY OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 3.2 definition of Practical

Difficulty of the Ordinance for each of the following standards listed in that section:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome;

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)

- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

- 3. The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

FINDINGS UNDER SECTION 5.7.3 VARIANCE OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 5.7.3 of the Ordinance for each of the following standards listed in that section:

Basic Conditions: ALL of the Basic Conditions SHALL be clearly demonstrated.

- 1. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

- 2. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)

- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

- 3. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

The following findings may support this standard HAS been met.

- a. The Board finds that generally the deck is unlikely to decrease the value of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

- 4. Is not where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)

e. The Board finds that

This standard HAS / HAS NOT been met.

5. Will relate only to the property that is under control of the applicant.

The following findings may support this standard HAS been met.

a. The Board finds that the applicant is the appointed representative of the property owner and the variance is specific to the property owners' parcel. (Exhibit 3)

b. The Board finds that

The following findings may support this standard HAS NOT been met.

a. The Board finds that

This standard HAS / HAS NOT been met.

Special Conditions: At least one shall be clearly demonstrated.

1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

The following findings may support this standard HAS been met.

a. The Board finds that

The following findings may support this standard HAS NOT been met.

a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)

b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)

c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)

d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)

e. The Board finds that

This standard HAS / HAS NOT been met.

2. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

3. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that that the lot was created prior to the effective date of the Ordinance. (Exhibit 5)
- b. The Board finds that that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

4. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS /HAS NOT been met.

VARIANCE REQUEST # 1 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of 5 feet 11 inches (5'11") from the required 15 feet side yard setback for a 131 square foot covered deck addition.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #1 be **APPROVED / DENIED**.

TIME PERIOD FOR JUDICIAL REVIEW

Mcl 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of

Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

DATE DECISION AND ORDER ADOPTED

Date

Chairperson

Date

Vice Chairperson

Secretary

Peninsula Township Planning & Zoning Department
EXHIBIT LIST

ZBA Request No. 842 – 9064 Peninsula Dr.
March 10, 2016

EXHIBIT LIST

1. Peninsula Township Master Plan
2. Peninsula Township Zoning Ordinance
3. Request for Variance filed by Ted Price
4. Staff report from Peninsula Township Planning & Zoning Department
5. Woodland Terrace Recorded Plat (Liber 4 Plats Page 72)
6. Land Use Permit 1805 for the construction of an attached deck and a detached garage.

Peninsula Township Variance Application

Application Guidelines

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

1. Zoning Board of Appeals (ZBA) applications are available from the Peninsula Township Planning & Zoning Department, 7:30 a.m. to 6:30 p.m., Monday, and 7:30 a.m. to 5:00 p.m. Tuesday through Thursday, or online at www.peninsulatownship.com/zoning.
2. **Applications must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the ZBA meeting. Ten (10) copies must be submitted.**
3. If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.
4. It is the applicant's responsibility to review and address the appropriate sections of the Zoning Ordinance prior to submission.
5. It is the applicant's responsibility to ensure that the application is complete upon submission. **Planning and Zoning Department staff will determine and confirm with the applicant that the application is complete.** An incomplete application will not be considered for review by the ZBA.
6. The application will be forwarded to members of the ZBA for a public hearing.
7. A notice of the public hearing must be mailed to the property owners and occupants within three hundred (300) feet of the subject property not less than fifteen (15) days before the public hearing.
8. The applicant will receive a notice of the public hearing in the mail, and is expected to attend the meeting.
9. ZBA meetings are held on the second Thursday of every month, beginning at 7:00 p.m. in the Township Hall, 13235 Center Road, Traverse City, MI 49686.
10. If the variance(s) are granted, **construction authorized by such variance(s) must begin within six (6) months after the granting of the variance, and the occupancy of land, premises, or buildings authorized by the variance must take place within one (1) year after the granting of the variance.**
11. If the variance(s) are granted, construction authorized by such variance(s) must comply with all other necessary permits. **A variance is independent from, and does not substitute for, all other permits.**
12. No application for a variance which has been denied wholly or in part by the Board shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.

OFFICE USE ONLY		
Date Received:	Fee Received:	Board Action:
Date Complete:	Meeting Date:	

Peninsula Township Variance Application

General Information

A fully completed application form, fee, and all related documents must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the Zoning Board of Appeals meeting. **10 copies are required.**

Applicant Information

Applicant: Name TED M. PRICE / RIVER NORTH CONSTRUCTION GROUP
Address Line 1 812 S. GARFIELD SUITE K
Address Line 2 TRAVERSE CITY, MI 49686
Phone 231-933-4224 Cell 231-632-0579
E-mail TPRICE@RIVERNORTHCK.COM

Owner: Name JOAN BOLES
Address Line 1 2511 WATERSTONE ESTATE CIRCLE E
Address Line 2 TOMBALL, TX 77375
Phone _____ Cell 281-923-3664
E-mail _____

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Parcel ID 28-11-690-006-00 Zoning RESIDENTIAL
Address Line 1 9064 PENINSULA DR.
Address Line 2 TRAVERSE CITY, MI 49686

Type of Request

Indicate which Ordinance requirement(s) are the subject of the variance request:

- | | | |
|--|---|---|
| <input type="checkbox"/> Front Yard Setback | <input checked="" type="checkbox"/> Side Yard Setback | <input type="checkbox"/> Rear Yard Setback |
| <input type="checkbox"/> Width to Depth Ratio | <input type="checkbox"/> Lot Coverage | <input type="checkbox"/> Off-Street Parking |
| <input type="checkbox"/> Signage | <input type="checkbox"/> Height/Width | <input type="checkbox"/> Non-Conformity Expansion |
| <input type="checkbox"/> Other: Please Describe: _____ | | |

Attachments

- \$375 Fee
- Practical Difficulty Worksheet (Found on Page 3 of Application)
- Basic and Special Conditions Worksheets (Found on Pages 4-5 of Application)
- Site plan drawn to scale showing the following:
 - a. Property boundaries; Shoreline properties must show the Ordinary High Water Mark on a certified survey, and the Flood Elevation Line (3 feet above OHWM) if any;
 - b. All existing and proposed structures including decks and roof overhangs;
 - c. Setbacks for existing and proposed structures (varies by zoning district).
- Front elevation diagram drawn to scale.

Peninsula Township Variance Application

Practical Difficulty Worksheet

In order for a variance to be justified, the applicant must demonstrate that strict application of the provisions of the Peninsula Township Zoning Ordinance to petitioned property would result in **Practical Difficulty** (defined in Article III of the Ordinance) inconsistent with the general purpose and intent of the Ordinance.

The Applicant must answer the following questions pertaining to practical difficulty in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 3.2, Practical Difficulty: To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating all of the following:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.

Is this condition met? Please explain: YES, THE SIDE SET BACK TO THE NORTH LIMITS THE ADDITION OF 24" OF COVERED DECK SPACE.

2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.

Is this condition met? Please explain: PROPER ALIGNMENT OF THE EXISTING DECK WOULD IMPROVE THE ESTHETICS OF THE HOME, IMPROVE LIVABILITY & INCREASE THE VALUE OF THE HOME & THOSE SURROUNDING IT.

3. The plight of the owner is due to unique circumstances of the property.

Is this condition met? Please explain: THE PROPERTY LOST MOST OF THE SHADE WHEN ALL THE TREES WERE KNAKED DOWN BY THE AUG 2015 STORM. AN EXPANDED PORCH WILL HELP IMPROVE LIVABILITY OF THE FRONT YARD BY PROVIDING ADDITIONAL SHADE.

4. The problem was not self-created.

Is this condition met? Please explain: NO, RECENT STORMS RESULTED IN SIGNIFICANT TREE LOSS & SHADE FOR THE FRONT YARD.

Peninsula Township Variance Application

Basic Conditions Worksheet

In order for a variance to be justified, the Applicant must meet all of the Basic Conditions, as defined in Section 5.7.3(1) of the Peninsula Township Zoning Ordinance. The Applicant must answer the following questions pertaining to the Basic Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(1) Basic Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, provided all of the Basic Conditions listed herein can be satisfied.

(1) **BASIC CONDITIONS:** The applicant must meet ALL of the following Basic Conditions. That any variance from this Ordinance:

a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

Is this condition met? Please explain: YES. THE ADDED DECK & COVERING WILL IMPROVE AESTHETICS OF THE HOME

b. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

Is this condition met? Please explain: SPECIAL USE IS NOT NEEDED FOR A COVERED PORCH

c. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

Is this condition met? Please explain: NO. IMPROVEMENTS WILL IMPROVE THE HOME & ULTIMATELY INCREASE THE VALUE OF THE HOME THIS IS A POSITIVE IMPACT.

d. Is not where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.

Is this condition met? Please explain: THE ANGLED PLACEMENT OF THE HOME IN 1948 PLACES THE HOME INTO THE CURRENT 15' SETBACK. WE WOULD EXTEND 4'-6" INTO THE SETBACK TO BALANCE THE DECK & PORCH TO IMPROVE THE APPEARANCE OF THE HOME BY BALANCING ROOF LINES & OVERHANGS.

e. Will relate only to property that is under control of the applicant.

Is this condition met? Please explain: YES. ADDITION WOULD EXTEND 4'-6" INTO THE 15' SETBACK.

Peninsula Township Variance Application

Special Conditions Worksheet

In order for a variance to be justified, the applicant must meet at least one of the Special Conditions, as defined in Section 5.7.3(2) of the Peninsula Township Zoning Ordinance. The applicant must answer the following questions pertaining to the Special Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(2) Special Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, provided at least one of the Special Conditions listed herein can be satisfied.

(2) **SPECIAL CONDITIONS:** When ALL of the foregoing Basic Conditions can be clearly demonstrated, the applicant must meet at least ONE of the following Special Conditions:

①
a. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

Is this condition met? Please explain: _____

b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted for any act of the applicant subsequent to the adoption of this Ordinance.

Is this condition met? Please explain: _____

c. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.

Is this condition met? Please explain: THE HOME WAS ORIGINAL CONSTRUCTED
IN 1948. THE HOME NOW ENROACHES INTO THE CURRENT 15' SETBACK.
I DON'T KNOW WHAT THE SET BACKS WERE IN 1948.

d. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

Is this condition met? Please explain: _____

Designated Agent

I, JOHN F. BOLES (Owner) give authorization to Ted Price & Gary Mott of River North Construction Group to act as my "Designated Agent" for the purposes of pulling permits. I agree to establish Sub-Accounts with materials suppliers and subcontractors providing materials and labor for my project. I understand that these are legal documents.

Signature: JF Boles Date: 10-14-15

Property Address & property tax ID - (if know):

9064 PENINSULA DR.

TRAVERSE CITY, MI 49684

PROPERTY TAX ID: 28-11-69000600

Owner Contact Information:

Mailing Address:

25111 WATERSTONE EST. CIR. E.

TOMBALL, TX 77375

Phone:

Cell: 281-923-3664 Other: N/A

Grantor	Grantee	Sale Price	Sale Date	Inst. Type	Terms of Sale	Sheet & Page	Verified By	Percent Trans.	
COCKFIELD DOUGLAS WILLIAM	BOLES JOHN F & SUSAN K	621,000	11/12/2007	WD	WARRANTY DEED	2007R-21097	DEED	100.0	
COCKFIELD BARBARA D TRUST	COCKFIELD DOUGLAS WILLIAM	1	05/10/2004	OC	INVALID SALE	2004R-04833	DEED	0.0	
COCKFIELD TRUST	COCKFIELD TRUST	100	07/17/2001	OC	INVALID SALE	1543/74	PTA	0.0	
COCKFIELD D	COCKFIELD D	185,000	01/29/1993	WD	WARRANTY DEED	931/889	PTA	0.0	
Property Address	Class: 400 RESIDENTIAL	Zoning: R1B	Building Permit(s)	Date	Number	Status			
1064 PENINSULA DR	School: District 28010		DECKING	11/23/2015	5387	PARTIAL			
Owner's Name/Address	P.R.E. 0%	MAP #: 28111344	NEW ADDITION	09/12/2012	38877	COMPLETED			
BOLES JOHN F & SUSAN K	2016 Est TCV 510,755 TCV/TRA: 200.06		NEW ADDITION	09/04/2012	5105	COMPLETED			
1403 LAKE BREEZE DR	X Improved Vacant								
10MBALL TX 77375	Public								
Payee's Name/Address	Improvements								
BOLES JOHN F & SUSAN K	Dirt Road								
1403 LAKE BREEZE DR	Gravel Road								
10MBALL TX 77375	Paved Road								
	Storm Sewer								
	Sidewalk								
	Water								
	Sewer								
	Electric								
	Gas								
	Curb								
	Street Lights								
	Standard Utilities								
	Underground Utils.								
	Topography of Site								
	Level								
	Rolling								
	Low								
	High								
	Landscaped								
	Swamp								
	Wooded								
	Pond								
	Waterfront								
	Waterline								
	Wetland								
	Flood Plain								
Who	When	What	Year	Land Value	Building Value	Assessed Value	Board of Review	Tribunal/Other	Taxable Value
SA	10/15/2013	CHG ADDRESS	2015	132,900	122,500	255,400			255,400S
SA	12/13/2012	BUILDING P	2014	132,900	123,000	255,900			255,900S
SA	04/29/2009	SALE REVIE	2013	132,900	138,400	271,300			271,300S
					136,600	269,500			269,500S

*** Information herein deemed reliable but not guaranteed***



DEC 17 2015

Building Type		(3) Roof (cont.)		(11) Heating/Cooling			(15) Built-ins		(15) Fireplaces		(16) Porches/Decks		(17) Garage	
Single Family	Mobile Home	Roof	Roof Cont.	Gas	Oil	Elec.	Appliance Allow.	Interior 1 Story	Interior 2 Story	Area	Type	Year Built	Capacity	
X		X	Asph/Flt	X			1 Dishwasher	Interior 1 Story	Interior 2 Story	384	W/P	1993	2	
	X		Insulation				1 Garbage Disposal	2nd/Same Stack						
			Front Overhang				Bath Heater	Two Sided						
			Other Overhang				Vent Fan	Exterior 1 Story						
			Interior				Hot Tub	Exterior 2 Story						
			Drywall				Unvented Hood	Prefab 1 Story						
			Plaster				1 Vented Hood	Prefab 2 Story						
			Paneled				Intercom	Heat Circulator						
			Wood T&G				Vacuuzzi Tub	Raised Hearth						
			Trim & Decoration				Tacuuzzi repl. Tub	Wood Stove						
			Ex				Oven	Direct-Vented Ga						
			X Ord				Microwave							
			Min				1 Standard Range							
			Size of Closets				Self Clean Range							
			Lg				Sauna							
			X Ord				Trash Compactor							
			Small				Central Vacuum							
			Doors				1 Security System							
			Solid											
			X H.C.											
			Room List											
			Basement											
			1st Floor											
			2nd Floor											
			3rd Floor											
			Bedrooms											
			(1) Exterior											
			X Wood/Shingle											
			Aluminum/Vinyl											
			Brick											
			X Insulation											
			(2) Windows											
			X Many											
			Avg.											
			X Large											
			Avg.											
			Few											
			Small											
			X Wood Sash											
			Metal Sash											
			Vinyl Sash											
			X Double Hung											
			Horiz. Slide											
			Casement											
			Double Glass											
			Patio Doors											
			Storms & Screens											
			(3) Roof											
			X Gable											
			Hip											
			Flat											
			X Asphalt Shingle											
			Chimney: Block											
			(10) Floor Support											
			X Joists: Joists											
			Unsupported Len:											
			Centr. Sup:											
			(9) Basement Finish											
			X Recreation											
			Living											
			SF											
			Walkout Doors											
			SF											
			No Floor											
			SF											
			(14) Water/Sewer											
			X Public Water											
			Water Well											
			1000 Gal Septic											
			1 2000 Gal Septic											
			Lump Sum Items:											
			(13) Plumbing											
			Average Fixture(s)											
			3											
			3 Fixture Bath											
			2 Fixture Bath											
			Softener, Auto											
			Softener, Manual											
			Solar Water Heat											
			No Plumbing											
			Extra Toilet											
			Extra Sink											
			Separate Shower											
			Ceramic Tile Floor											
			Ceramic Tile Mains											
			Ceramic Tub Alcove											
			Vent Fan											
			(15) Fireplaces											
			1											
			Exterior 1 Story											
			Exterior 2 Story											
			2nd/Same Stack											
			Two Sided											
			Exterior 1 Story											
			Exterior 2 Story											
			Prefab 1 Story											
			Prefab 2 Story											
			Heat Circulator											
			Raised Hearth											
			Wood Stove											
			Direct-Vented Ga											
			Class: B -10											
			Effec. Age: 15											
			Floor Area: 2553											
			Total Base Cost: 218,244											
			Total Base New : 303,359											
			Total Depr Cost: 261,298											
			Estimated T.C.V.: 236,997											
			(17) Garage											
			Storage Area: 0											
			No Conc. Floor: 0											
			Basmt Garage:											
			Carport Area:											
			Roof:											
			(16) Porches/Decks											
			Year Built: 1993											
			Car Capacity: 2											
			Class: B											
			Exterior: Siding											
			Brick Ven.: 0											
			Stone Ven.: 0											
			Common Wall: Detache											
			Foundation: 18 Inch											
			Finished ?:											
			Auto. Doors: 1											
			Mech. Doors: 0											
			Area: 720											
			% Good: 0											
			Storage Area: 0											
			No Conc. Floor: 0											
			Basmt Garage:											
			Carport Area:											
			Roof:											

*** Information herein deemed reliable but not guaranteed***

CASEY
MOTT

RIVER NORTH HOME & COTTAGE

812 S. GARFIELD SUITE K
TRAVERSE CITY, MI 49686
231-933-4224

BOLES
RESIDENCE

3400 TERRELL BLVD
BAYVIEW, MI 48066

EXTERIOR
ELEVATIONS

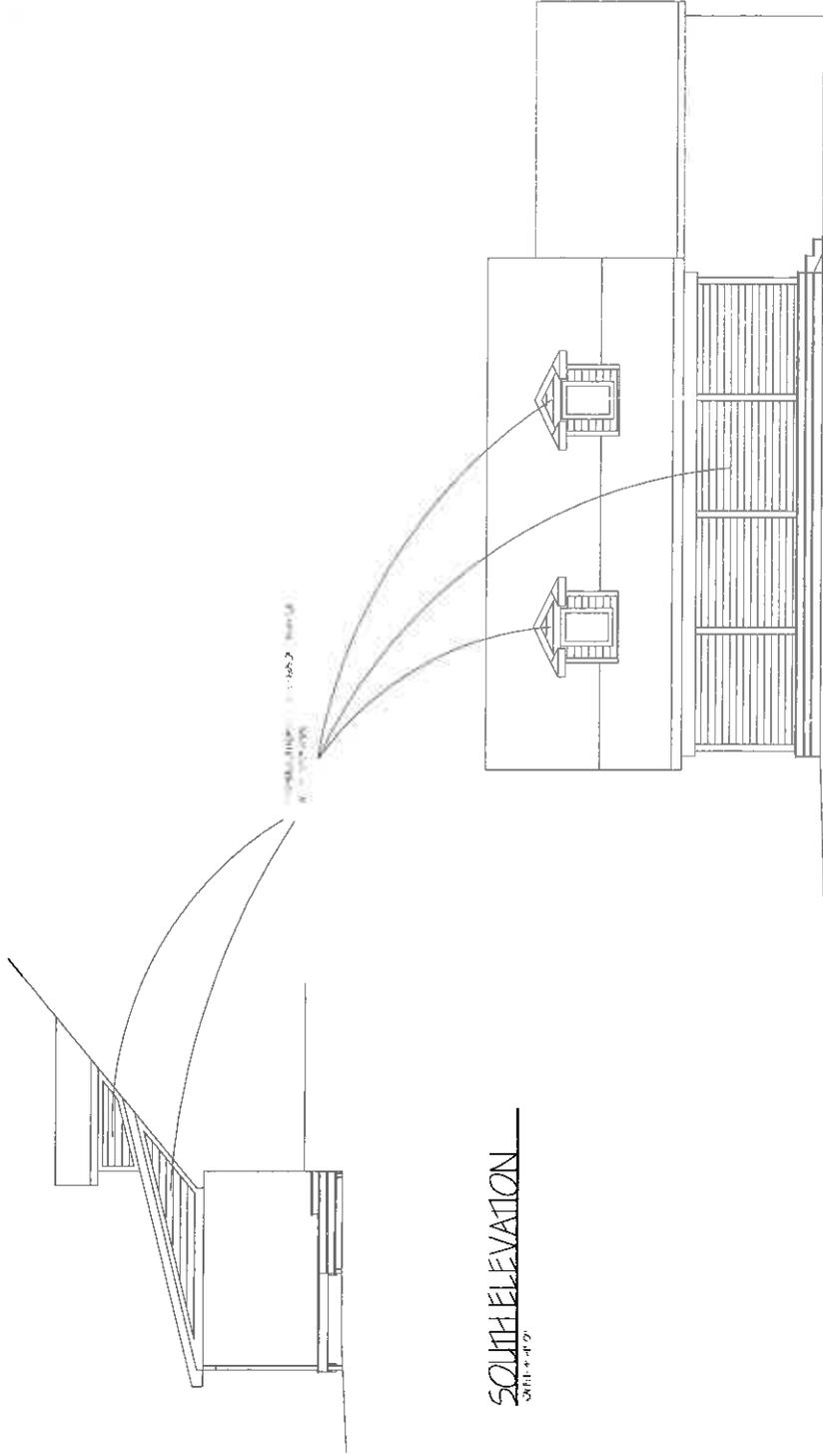
Scale
Date
Project No.

Client
Architect
Interior Designer

Project No.
R-1015

Sheet No.
A5

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SOUTH ELEVATION
SCALE: 1/4" = 1'-0"

WEST ELEVATION
SCALE: 1/4" = 1'-0"

PENINSULA TOWNSHIP
Application For Land Use Permit

Code # 690-006-00

Permit # 1805

Zoned R-1B

* Fee 15.00
CK# 094

Property Owner James Brown

Address: 9064 Peninsula Dr. T.C.

Property Location: Lot 6
Woodland Terrace between McKinley
Lot # and/or road road

Side of Road (N.S.E.W.) E and Wilson
road

Proposed Use: Garage 24x30 Property address Same
Deck 25x12

Land Location

- Platted subdivision
- Metes and bounds description
- Platted subdivision with shore frontage
- Metes and bounds description with shore frontage

Health Dept Permit No.

Driveway Permit

639-624 Proof of Ownership

D.N.R. Approval

Plot Plan

Soil Erosion *

Survey

James H. Brown
Property Owner/Agent

Date Declined _____

Date Approved 7-19-85
[Signature]
Zoning Administrator

Reason: _____

Date Expires 7-19-86

Zoning Administrator

*Non refundable

PENINSULA TOWNSHIP
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Code # 690-006-00

Permit # 1805

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Plot Plan

Soil Erosion *

Survey

James H. Brown
Property Owner/Agent

Date Declined _____

Date Approved 7-19-85
Dan G. Dells
Zoning Administrator

Reason: _____

Date Expires 7-19-86

Zoning Administrator

*Non refundable

LEGAL NOTICE

PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
NOTICE OF HEARING

PLEASE TAKE NOTICE that the Peninsula Township Zoning Board of Appeals will hold a regular meeting on March 10, 2016 at 7:00 PM at the Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686, (231) 223-7322. The following applicants will be heard:

Request No. 844, Zoning A1

Applicant: Josh & Lesli Humphrey, 1101 Elmer Dr., Traverse City, MI 49686

Owner: Josh & Lesli Humphrey, 1101 Elmer Dr., Traverse City, MI 49686

Property Address: 1101 Elmer Dr., Traverse City, MI 49686

Request: (1) a variance of 14 feet (14') from the required 35 feet (35') front yard setback to allow for the construction of a covered porch addition.

Parcel Code No. 28-11-008-021-55

Please be advised that the public may appear at the public hearing in person or by council.

Written comment may be submitted to Peninsula Township Planning & Zoning Department at 13235 Center Rd., Traverse City, MI 49686 no later than 4:30 PM on the date of the hearing.

If you are planning to attend the meeting and are disabled requiring any special assistance, please so notify the Planning & Zoning Department at (231) 223-7322 or call TDD at (231) 922-4766.

SUBJECT PROPERTY



Peninsula Township Planning & Zoning Department
STAFF REPORT

ZBA Request #844 – 1101 Elmer Dr.
March 10, 2016

To: Peninsula Township Zoning Board of Appeals
From: Michelle Reardon, Planning & Zoning
RE: Request No. 844 – 1101 Elmer Dr.
Hearing Date: March 10, 2016 – 7:00 PM
Applicant: Josh & Lesli Humphrey, 1101 Elmer Dr., Traverse City, MI 49686
Site: 1101 Elmer Dr., Traverse City, MI 49686
Tax ID: 28-11-008-021-55

Information:

- The site is approximately 10.06 acres in size.
- The property is zoned Agricultural (A-1); the surrounding area is zoned Agricultural (A-1) and Coastal Zone Single and Two-Family (R-1B).
- The existing lot was created in 1974, after to the adoption of the Peninsula Township Zoning Ordinance in 1972.
- There is a building envelope located on the lot.
- The existing residential structure was built in 1974.
- The existing legal nonconforming front yard setback is fifteen feet (15') from the residential structure.
- The proposed covered porch requires a front yard setback variance of 14 feet.

Action

Requested: (1) a variance of 14 feet (14') from the required 35 feet (35') front yard setback to allow for the construction of a covered porch addition.

Mailing: Thirteen (13) surrounding property owners were notified. No comments were received as of March 3, 2016.

Applicant

Statement: Please see the enclosed application submitted by Josh & Lesli Humphrey, property owners.

Staff Comments:

Request #1.

The applicant is requesting a variance for an addition to a legal non-conforming structure.

Background

The original residence was built in 1974 and is considered legally non-conforming. As demonstrated on the site plan, the existing residential structure is 15 feet from the front lot line. The applicant proposes to demo a portion of the existing deck and the entire garage to allow for a residential addition and a covered front porch.

The proposed structure conforms to relevant zoning standards for minimum lot setbacks of the rear, and side yards, but does not conform to the minimum front yard setback as demonstrated in the following table:

R-1B Standards (Section 6.8)	Required	Proposed Front Porch Addition	Conforms to Standard?
Maximum Height	35'	14'	Yes
Minimum Front Setback	35'	21'	No
Minimum North Side Setback	50'	344'	Yes
Minimum South Side Setback	50'	894'	Yes
Minimum Rear Setback	50'	218'	Yes
Minimum OHWM Setback	NA	NA	NA
Maximum Lot Coverage	NA	NA	NA

The applicant requests (1) a variance of 14 feet (14') from the required 35 feet (35') front yard setback to allow for the construction of a covered porch addition. The requested variance must meet the following standards in order to be granted. Specific staff comments follow the standards.

A. Section 3.2 Definition of Practical Difficulty

To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating all of the following:

- a) Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.
- b) A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.
- c) The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

B. Section 5.7.3 Variances

The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED ALL of the BASIC conditions listed herein and any ONE of the SPECIAL conditions listed thereafter can be satisfied.

- 1) Basic Conditions: That any variance from this Ordinance:
 - a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.
 - b. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.
 - c. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
 - d. Is not where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.

- e. Will relate only to the property that is under control of the applicant.
- 2) Special Conditions: When ALL of the foregoing basic conditions can be clearly demonstrated:
- a. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.
 - b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.
 - c. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.
 - d. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The subject property, zoned A-1, was created after the effective date of the Ordinance, and considered legally nonconforming. The property width is approximately 96.83 feet. The property length is approximately 353 feet.

Peninsula Township Planning & Zoning Department
FINDINGS OF FACT

ZBA Request #844 – 1101 Elmer Dr.
March 10, 2016

DECISION AND ORDER

Applicant: Josh & Lesli Humphrey, property owners

Hearing Date: March 10, 2016

PROPERTY DESCRIPTION

The property of 1101 Elmer Dr., Traverse City, MI 49686, Parcel No. 28-11-008-021-55, herein after referred to as the “property”.

APPLICATION

Request: (1) a variance of 14 feet (14') from the required 35 feet (35') front yard setback to allow for the construction of a covered porch addition.

The Board having considered the Application, a public hearing having been held on March 10, 2016, after giving due notice as required by law, the Board having heard the statements of the Applicant and agents, the Board after having considered letters submitted by members of the public and comments by members of the public, the Board having considered five (5) exhibits, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

1. The Board finds that the property is currently zoned Agricultural (A-1). (Exhibits 1, 2)
2. The Board finds that the lot and structure were both created in 1974. (Exhibit 3)
3. The Board finds that the existing residential structure is legally non-conforming. (Exhibits 2, 5)
4. The Board finds that the proposed covered porch addition does not conform to relevant zoning standards. (Exhibits 2, 3, 4, 5)
5. The Board finds that the applicant requests (1) a variance of 14 feet (14') from the required 35 feet (35') front yard setback to allow for the construction of a covered porch addition.

Variance Request #1 a variance of 14 feet (14') from the required 35 feet (35') front yard setback to allow for the construction of a covered porch addition.

FINDINGS UNDER SECTION 3.2 – DEFINITIONS – PRACTICAL DIFFICULTY OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 3.2 definition of Practical

Difficulty of the Ordinance for each of the following standards listed in that section:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome;

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.2.2 an attached porch is a customary accessory structure to a primary structure and is a use by right in the A-1 zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed addition does not comply with the front yard setback requirement. (Exhibits 2, 3, 4, 5)
- c. The Board finds that there is an existing legal non-conforming attached deck currently in use. (Exhibits 3,4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing legal nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.2.2 an attached porch is a customary accessory structure to a primary structure and is a use by right in the A-1 zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed addition does not comply with the front yard setback requirement. (Exhibits 2, 3, 4, 5)

- c. The Board finds that there is an existing legal non-conforming attached deck currently in use. (Exhibits 3,4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing legal nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

- 3. The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.2.2 an attached porch is a customary accessory structure to a primary structure and is a use by right in the A-1 zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed addition does not comply with the front yard setback requirement. (Exhibits 2, 3, 4, 5)
- c. The Board finds that there is an existing legal non-conforming attached deck currently in use. (Exhibits 3,4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing legal nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

FINDINGS UNDER SECTION 5.7.3 VARIANCE OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 5.7.3 of the Ordinance for each of the following standards listed in that section:

Basic Conditions: ALL of the Basic Conditions SHALL be clearly demonstrated.

- 1. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.2.2 an attached porch is a customary accessory structure to a primary structure and is a use by right in the A-1 zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed addition does not comply with the front yard setback requirement. (Exhibits 2, 3, 4, 5)
- c. The Board finds that there is an existing legal non-conforming attached deck currently in use. (Exhibits 3,4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing legal nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

- 2. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.2.2 an attached porch is a customary accessory structure to a primary structure and is a use by right in the A-1 zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed addition does not comply with the front yard setback requirement. (Exhibits 2, 3, 4, 5)
- c. The Board finds that there is an existing legal non-conforming attached deck currently in use. (Exhibits 3,4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing legal nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

3. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

The following findings may support this standard HAS been met.

- a. The Board finds that generally the covered porch is unlikely to decrease the value of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

4. Is not where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.2.2 an attached porch is a customary accessory structure to a primary structure and is a use by right in the A-1 zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed addition does not comply with the front yard setback requirement. (Exhibits 2, 3, 4, 5)
- c. The Board finds that there is an existing legal non-conforming attached deck currently in use. (Exhibits 3,4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing legal nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

5. Will relate only to the property that is under control of the applicant.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is the property owner and the variance is specific to the property owners' parcel. (Exhibit 3)
- b. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

Special Conditions: At least one shall be clearly demonstrated.

1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.2.2 an attached porch is a customary accessory structure to a primary structure and is a use by right in the A-1 zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed addition does not comply with the front yard setback requirement. (Exhibits 2, 3, 4, 5)
- c. The Board finds that there is an existing legal non-conforming attached deck currently in use. (Exhibits 3,4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing legal nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

2. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.2.2 an attached porch is a customary accessory structure to a primary structure and is a use by right in the A-1 zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed addition does not comply with the front yard setback requirement. (Exhibits 2, 3, 4, 5)
- c. The Board finds that there is an existing legal non-conforming attached deck currently in use. (Exhibits 3,4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing legal nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS / HAS NOT been met.

- 3. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that that the lot was created after the effective date of the Ordinance. (Exhibit 5)
- b. The Board finds that that

This standard HAS / HAS NOT been met.

- 4. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The following findings may support this standard HAS been met.

- a. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Agricultural (A-1). According to Section 6.2.2 an attached porch is a customary accessory structure to a primary structure and is a use by right in the A-1 zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the proposed addition does not comply with the front yard setback requirement. (Exhibits 2, 3, 4, 5)
- c. The Board finds that there is an existing legal non-conforming attached deck currently in use. (Exhibits 3,4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing legal nonconforming attached deck. (Exhibit 2)
- e. The Board finds that

This standard HAS /HAS NOT been met.

VARIANCE REQUEST # 1 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of 14 feet (14') from the required 35 feet (35') front yard setback to allow for the construction of a covered porch addition.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #1 be **APPROVED / DENIED**.

TIME PERIOD FOR JUDICIAL REVIEW

Mcl 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

DATE DECISION AND ORDER ADOPTED

Date

Chairperson

Date

Vice Chairperson

Secretary

Peninsula Township Planning & Zoning Department
EXHIBIT LIST

ZBA Request No. 844 – 1101 Elmer Dr.
March 10, 2016

EXHIBIT LIST

1. Peninsula Township Master Plan
2. Peninsula Township Zoning Ordinance
3. Request for Variance filed by Josh & Lesli Humphrey
4. Staff report from Peninsula Township Planning & Zoning Department
5. Visual Depiction of Request

Peninsula Township Variance Application

Application Guidelines

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

1. Zoning Board of Appeals (ZBA) applications are available from the Peninsula Township Planning & Zoning Department, 7:30 a.m. to 6:30 p.m., Monday, and 7:30 a.m. to 5:00 p.m. Tuesday through Thursday, or online at www.peninsulatownship.com/zoning.
2. **Applications must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the ZBA meeting. Ten (10) copies must be submitted.**
3. If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.
4. It is the applicant's responsibility to review and address the appropriate sections of the Zoning Ordinance prior to submission.
5. It is the applicant's responsibility to ensure that the application is complete upon submission. **Planning and Zoning Department staff will determine and confirm with the applicant that the application is complete.** An incomplete application will not be considered for review by the ZBA.
6. The application will be forwarded to members of the ZBA for a public hearing.
7. A notice of the public hearing must be mailed to the property owners and occupants within three hundred (300) feet of the subject property not less than fifteen (15) days before the public hearing.
8. The applicant will receive a notice of the public hearing in the mail, and is expected to attend the meeting.
9. ZBA meetings are held on the second Thursday of every month, beginning at 7:00 p.m. in the Township Hall, 13235 Center Road, Traverse City, MI 49686.
10. If the variance(s) are granted, **construction authorized by such variance(s) must begin within six (6) months after the granting of the variance, and the occupancy of land, premises, or buildings authorized by the variance must take place within one (1) year after the granting of the variance.**
11. If the variance(s) are granted, construction authorized by such variance(s) must comply with all other necessary permits. **A variance is independent from, and does not substitute for, all other permits.**
12. No application for a variance which has been denied wholly or in part by the Board shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.

OFFICE USE ONLY		
Date Received: 2/11/2016	Fee Received: \$ 375 2/11/16	Board Action:
Date Complete:	Meeting Date: 3/10/2016	

Peninsula Township Variance Application

General Information

A fully completed application form, fee, and all related documents must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the Zoning Board of Appeals meeting. **10 copies are required.**

Applicant Information

Applicant: Name Josh & Lesli Humphrey
Address Line 1 1101 Elmer Dr.
Address Line 2 Traverse City, MI 49686
Phone (231) 633-2211 Cell _____
E-mail ~~lesli~~ leslihumphrey@hotmail.com

Owner: Name Josh & Lesli Humphrey
Address Line 1 1101 Elmer Dr.
Address Line 2 TC, MI 49686
Phone (231) 633 2211 Cell _____
E-mail leslihumphrey@hotmail.com

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Parcel ID 2811-008-021-55 Zoning Agriculture (A1)
Address Line 1 1101 Elmer Dr.
Address Line 2 TC, MI 49686

Type of Request

Indicate which Ordinance requirement(s) are the subject of the variance request:

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Front Yard Setback | <input type="checkbox"/> Side Yard Setback | <input type="checkbox"/> Rear Yard Setback |
| <input type="checkbox"/> Width to Depth Ratio | <input type="checkbox"/> Lot Coverage | <input type="checkbox"/> Off-Street Parking |
| <input type="checkbox"/> Signage | <input type="checkbox"/> Height/Width | <input type="checkbox"/> Non-Conformity Expansion |
| <input type="checkbox"/> Other: Please Describe: _____ | | |

Attachments

- \$375 Fee
- Practical Difficulty Worksheet (Found on Page 3 of Application)
- Basic and Special Conditions Worksheets (Found on Pages 4-5 of Application)
- Site plan drawn to scale showing the following:
 - a. Property boundaries; Shoreline properties must show the Ordinary High Water Mark on a certified survey, and the Flood Elevation Line (3 feet above OHWM) if any;
 - b. All existing and proposed structures including decks and roof overhangs;
 - c. Setbacks for existing and proposed structures (varies by zoning district).
- Front elevation diagram drawn to scale.

Peninsula Township Variance Application

Practical Difficulty Worksheet

In order for a variance to be justified, the applicant must demonstrate that strict application of the provisions of the Peninsula Township Zoning Ordinance to petitioned property would result in **Practical Difficulty** (defined in Article III of the Ordinance) inconsistent with the general purpose and intent of the Ordinance.

The Applicant must answer the following questions pertaining to practical difficulty in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 3.2, Practical Difficulty: To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating all of the following:

- 1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.**

Is this condition met? Please explain: Removing covered porch (proposed) would not only take away home value, but the overall functionality of the porch. Additionally, not having it would cause potential water damage to the foundation.

- 2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.**

Is this condition met? Please explain: The covered porch adds value to the house + the overall project + adds value to the neighboring homes + property.

- 3. The plight of the owner is due to unique circumstances of the property.**

Is this condition met? Please explain: The house was constructed in its current location in 1974, prior to the parceling and selling of the original owners land. (Parent parcel was 23 acres when home was built)

- 4. The problem was not self-created.**

Is this condition met? Please explain: The house was built in 1974 by Bill Lutz and later parcelled off causing non conformity. land was

Peninsula Township Variance Application

Basic Conditions Worksheet

In order for a variance to be justified, the Applicant must meet **all of the Basic Conditions**, as defined in Section 5.7.3(1) of the Peninsula Township Zoning Ordinance. The Applicant must answer the following questions pertaining to the Basic Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(1) Basic Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided all of the Basic Conditions listed herein can be satisfied.**

(1) **BASIC CONDITIONS:** The applicant must meet ALL of the following Basic Conditions. That any variance from this Ordinance:

a. **Will not be contrary to the public interest or to the intent and purpose of this Ordinance.**

Is this condition met? Please explain: The completion of the project adds value to subject property and neighbors property. Proposed structure lessens current nonconformity.

b. **Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.**

Is this condition met? Please explain: This is a primary residence and will be used as such.

c. **Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.**

Is this condition met? Please explain: It will improve property values and there will be no adverse impact.

d. **Is not where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.**

Is this condition met? Please explain: Due to location of home and necessary improvements which add value & functionality while protecting current foundation it is not possible to follow set-back guidelines.

e. **Will relate only to property that is under control of the applicant.**

Is this condition met? Please explain: This property is our primary residence & this variance only relates to a small nonconformity.

Peninsula Township Variance Application

Special Conditions Worksheet

In order for a variance to be justified, the applicant must meet **at least one of the Special Conditions**, as defined in Section 5.7.3(2) of the Peninsula Township Zoning Ordinance. The applicant must answer the following questions pertaining to the Special Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(2) Special Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided at least one of the Special Conditions listed herein can be satisfied.**

(2) **SPECIAL CONDITIONS:** When ALL of the foregoing Basic Conditions can be clearly demonstrated, the applicant must meet at least ONE of the following Special Conditions:

- a. **Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.**

Is this condition met? Please explain: This parcel is unique in that the original land owner built it where it currently stands. Therefore, in order to make improvements to the property we encounter unnecessary hardship related to front set-

- b. **Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted for any act of the applicant subsequent to the adoption of this Ordinance.**

Is this condition met? Please explain: _____

- c. **Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.**

Is this condition met? Please explain: _____

- d. **Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.**

Is this condition met? Please explain: _____

PLAT OF HARBOR VIEW

Existing/
Current

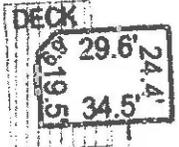
20' EASEMENT
(LIBER 970, PAGE 453)

6

WELL
DOES NOT
ENCROACH



FRAME
GARAGE



HSE # 1101
2-STORY FRAME
WITH BSMNT

GRAY DRIVE

20' EASEMENT
(LIBER 511, PAGE 813)

5

1/2" = 25'

1308.13'

20' UTILITY EASEMENT

ELMER
DRIVE (66')

N 00° 24' 13" E

PARCEL "A"

4

Proposed

PLAT OF HARBOR VIEW

20' EASEMENT
(LIBER 970, PAGE 453)

6

WELL DOES NOT ENCR OACH

20' EASEMENT
(LIBER 511, PAGE 813)

5

GRAV. DRIVE

1308.13'

20' UTILITY EASEMENT

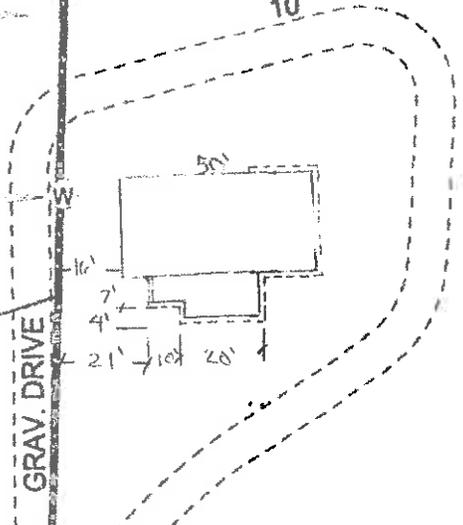
ELMER DRIVE (66')

N 00° 24' 13" E

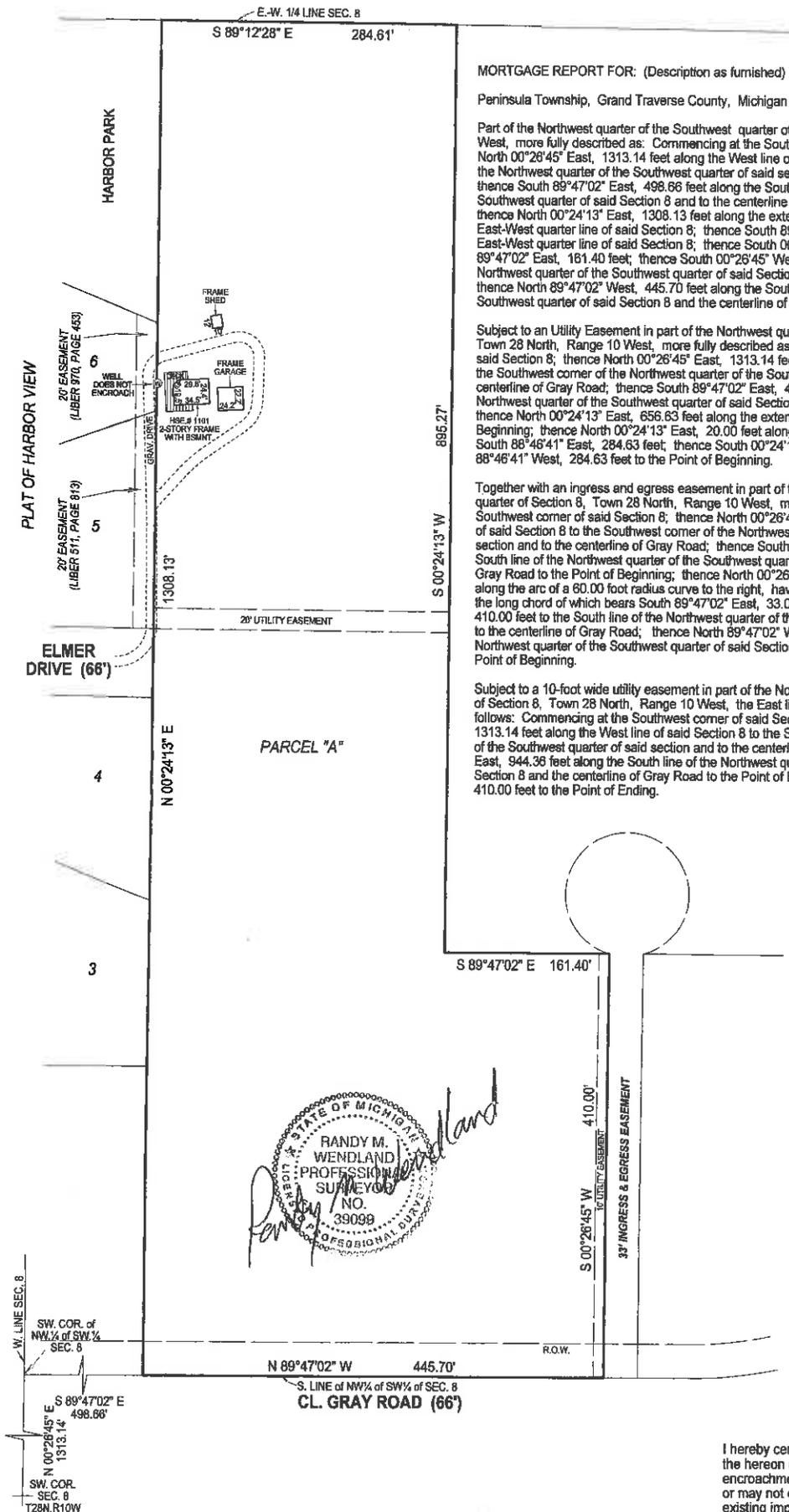
PARCEL "A"

4

FRAME SHED



1/2" = 25'



MORTGAGE REPORT FOR: (Description as furnished)

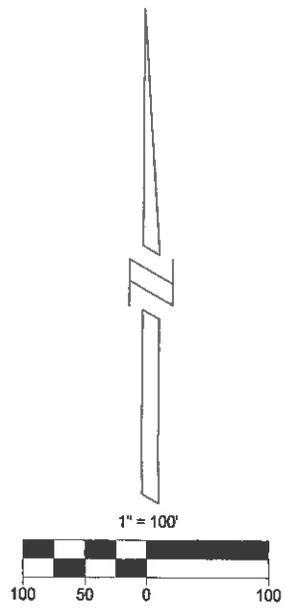
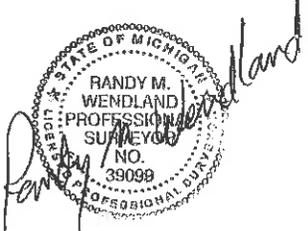
Peninsula Township, Grand Traverse County, Michigan

Part of the Northwest quarter of the Southwest quarter of Section 8, Town 28 North, Range 10 West, more fully described as: Commencing at the Southwest corner of said Section 8; thence North 00°26'45" East, 1313.14 feet along the West line of said Section 8 to the Southwest corner of the Northwest quarter of the Southwest quarter of said section and to the centerline of Gray Road; thence South 89°47'02" East, 498.66 feet along the South line of the Northwest quarter of the Southwest quarter of said Section 8 and to the centerline of Gray Road to the Point of Beginning; thence North 00°24'13" East, 1308.13 feet along the extended East line of Harbor View to the East-West quarter line of said Section 8; thence South 89°12'28" East, 284.61 feet along the East-West quarter line of said Section 8; thence South 00°24'13" West, 895.27 feet along the East-West quarter line of said Section 8; thence South 00°26'45" West, 410.00 feet to the South line of the Northwest quarter of the Southwest quarter of said Section 8 and to the centerline of Gray Road; thence North 89°47'02" West, 445.70 feet along the South line of the Northwest quarter of the Southwest quarter of said Section 8 and the centerline of Gray Road to the Point of Beginning.

Subject to an Utility Easement in part of the Northwest quarter of the Southwest quarter of Section 8, Town 28 North, Range 10 West, more fully described as: Commencing at the Southwest corner of said Section 8; thence North 00°26'45" East, 1313.14 feet along the West line of said Section 8 to the Southwest corner of the Northwest quarter of the Southwest quarter of said section and to the centerline of Gray Road; thence South 89°47'02" East, 498.66 feet along the South line of the Northwest quarter of the Southwest quarter of said Section 8 and the centerline of Gray Road; thence North 00°24'13" East, 656.63 feet along the extended East line of Harbor View to the Point of Beginning; thence North 00°24'13" East, 20.00 feet along the East line of Harbor View, thence South 89°46'41" West, 284.63 feet; thence South 00°24'13" West, 20.00 feet; thence North 88°46'41" West, 284.63 feet to the Point of Beginning.

Together with an ingress and egress easement in part of the Northwest quarter of the Southwest quarter of Section 8, Town 28 North, Range 10 West, more fully described as: Commencing at the Southwest corner of said Section 8; thence North 00°26'45" East, 1313.14 feet along the West line of said Section 8 to the Southwest corner of the Northwest quarter of the Southwest quarter of said section and to the centerline of Gray Road; thence South 89°47'02" East, 944.36 feet along the South line of the Northwest quarter of the Southwest quarter of said Section 8 and the centerline of Gray Road to the Point of Beginning; thence North 00°26'45" East, 410.00 feet; thence South 89°47'02" East, 33.00 feet; thence South 00°26'45" West, 410.00 feet to the South line of the Northwest quarter of the Southwest quarter of said Section 8 and to the centerline of Gray Road; thence North 89°47'02" West, 33.00 feet along the South line of the Northwest quarter of the Southwest quarter of said Section 8 and the centerline of Gray Road to the Point of Beginning.

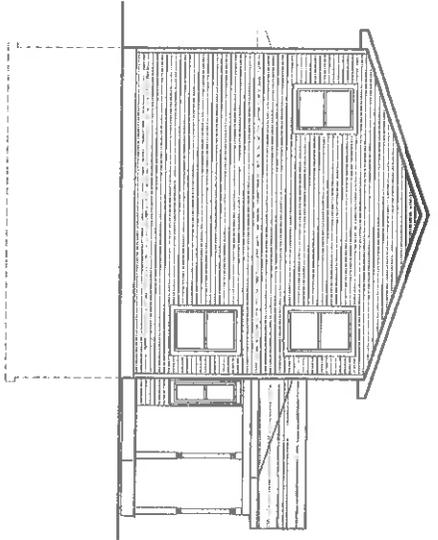
Subject to a 10-foot wide utility easement in part of the Northwest quarter of the Southwest quarter of Section 8, Town 28 North, Range 10 West, the East line of said easement being described as follows: Commencing at the Southwest corner of said Section 8; thence North 00°26'45" East, 1313.14 feet along the West line of said Section 8 to the Southwest corner of the Northwest quarter of the Southwest quarter of said section and to the centerline of Gray Road; thence South 89°47'02" East, 944.36 feet along the South line of the Northwest quarter of the Southwest quarter of said Section 8 and the centerline of Gray Road to the Point of Beginning; thence North 00°26'45" East, 410.00 feet to the Point of Ending.



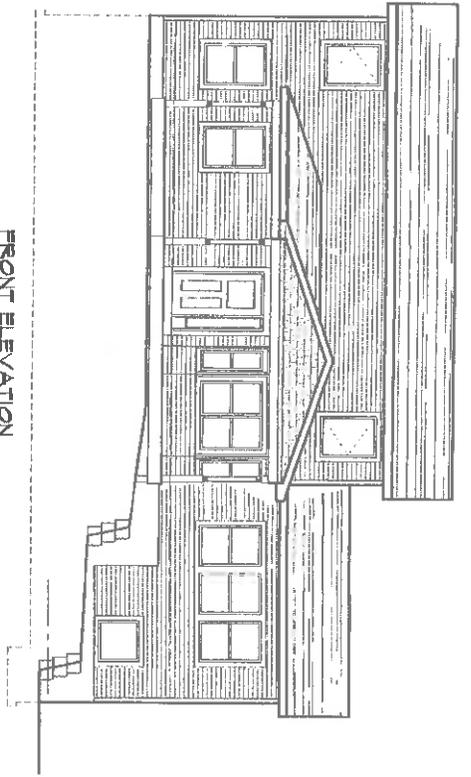
PREPARED FOR:
JOSHUA & LESLI HUMPHREY

I hereby certify to MEMBERS CREDIT UNION that on the hereon described parcel of land, that there are no encroachments (except that any existing fences may or may not constitute an encroachment), and the existing improvements are as shown.

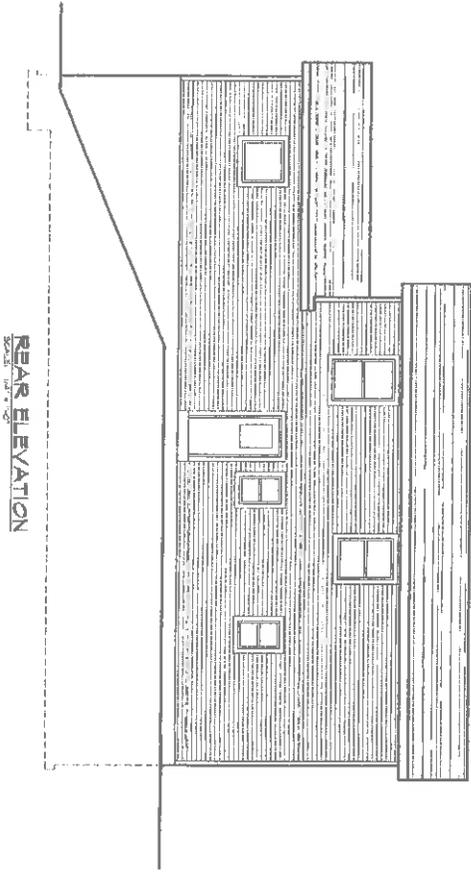
<p>WENDLAND SURVEYING, P.C.</p> <p>P.O. Box 7149 Traverse City, Michigan 49696-7149</p> <p>Phone: (231) 933-9126 Fax: (231) 933-9127</p>		<p>NOTE: This report is for mortgage purposes only and should not be used to establish the property lines for the construction of improvements.</p>	<p>Date: 3-25-13 File No. 13018 Sheet 1 of 1</p>
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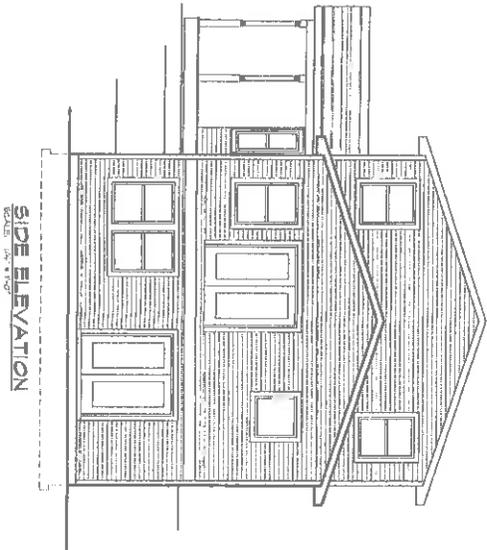
SIDE ELEVATION
SCALE: 1/8" = 1'-0"



FRONT ELEVATION
SCALE: 1/8" = 1'-0"

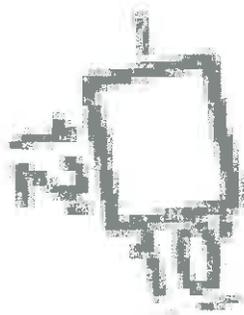


REAR ELEVATION
SCALE: 1/8" = 1'-0"



SIDE ELEVATION
SCALE: 1/8" = 1'-0"

Side



344'

Front

15'

Existing

Proposed

Rear

218'

Existing

Proposed

GRAY. DRIVE

6'

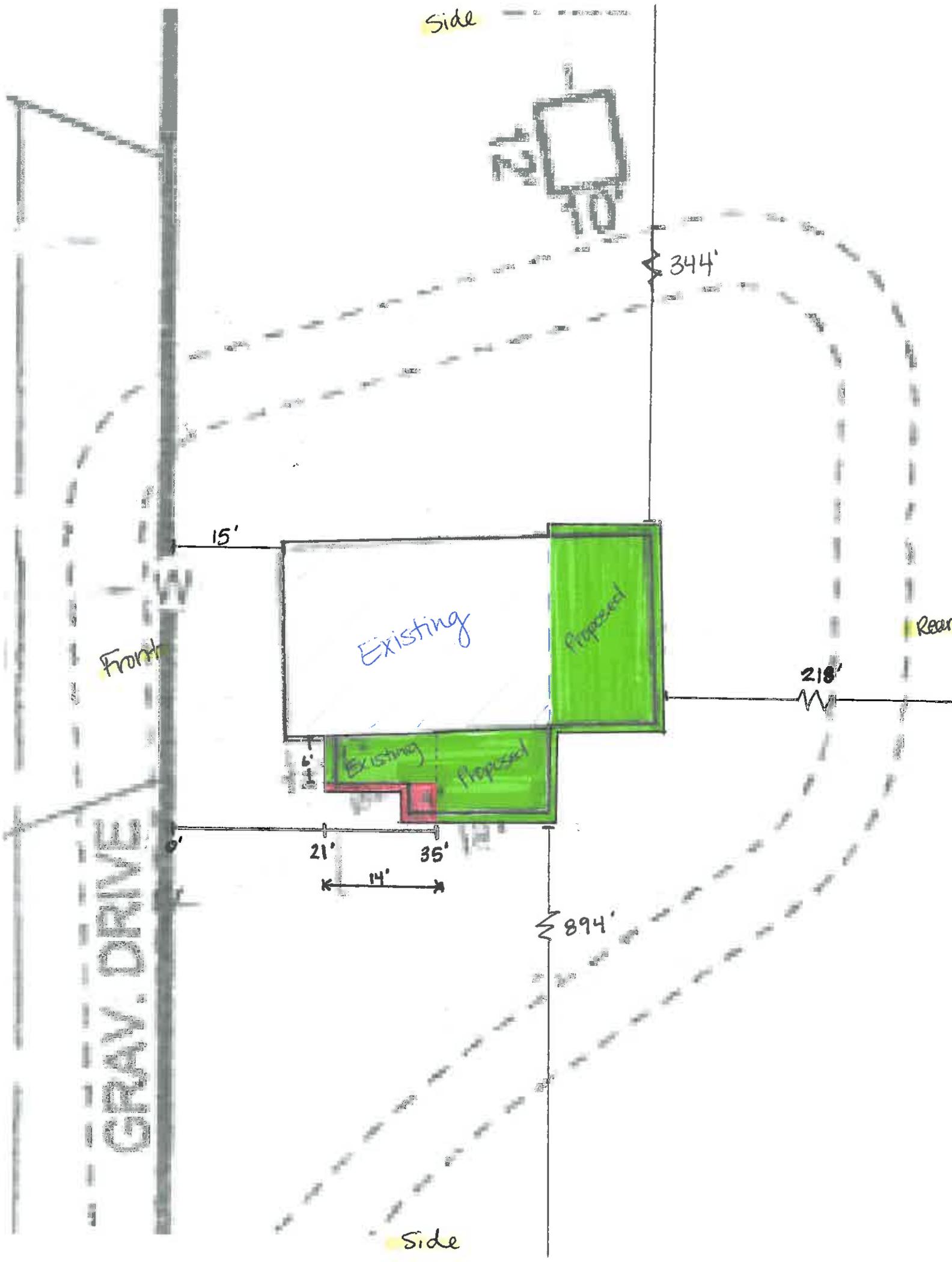
21'

35'

14'

894'

Side



LEGAL NOTICE

PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
NOTICE OF HEARING

PLEASE TAKE NOTICE that the Peninsula Township Zoning Board of Appeals will hold a regular meeting on March 10, 2016 at 7:00 PM at the Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686, (231) 223-7322. The following applicants will be heard:

Request No. 845, Zoning R1-B

Applicant: David J. Clark, 11522 Peninsula Dr., Traverse City, MI 49686

Owner: David J. Clark, 11522 Peninsula Dr., Traverse City, MI 49686

Property Address: 11522 Peninsula Dr., Traverse City, MI 49686

Requests: (1) a variance of 6 feet (6') from the required 30 feet (30') front yard setback to allow for the construction of a 132 square foot residential addition; (2) a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage; (3) a variance of 2.7% from the required 15% maximum area coverage to allow for the construction of a residential addition and attached garage.

Parcel Code No. 28-11-467-022-00

Please be advised that the public may appear at the public hearing in person or by council.

Written comment may be submitted to Peninsula Township Planning & Zoning Department at 13235 Center Rd., Traverse City, MI 49686 no later than 4:30 PM on the date of the hearing.

If you are planning to attend the meeting and are disabled requiring any special assistance, please so notify the Planning & Zoning Department at (231) 223-7322 or call TDD at (231) 922-4766.

SUBJECT PROPERTY



Peninsula Township Planning & Zoning Department
STAFF REPORT

ZBA Request #845 – 11522 Peninsula Dr.
March 10, 2016

To: Peninsula Township Zoning Board of Appeals
From: Michelle Reardon, Planning & Zoning
RE: Variance Request No. 845
Hearing Date: March 10, 2016 – 7:00 PM
Applicant: David J. Clark, 11522 Peninsula Dr., Traverse City, MI 49685
Site: 11522 Peninsula Dr., Traverse City, MI 49685
Tax ID: 28-11-467-022-00

Information:

- The site is approximately 0.60 acres in size.
- The property is zoned Costal Zone Single and Two-Family (R-1B); the surrounding area is also zoned Costal Zone Single and Two-Family (R-1B); the surrounding land uses are residential.
- The square footage of the existing structure footprint is approximately **3,931.5 square feet**.
- The square footage of the proposed structure footprint is approximately **1,132 square feet**.
- The existing lot coverage is approximately **13.8%**; the proposed lot coverage is approximately **17.7%**; the maximum lot coverage allowed is 15%.
- The existing front yard setback is 20 feet; the proposed front yard setbacks are 21 feet and 24 feet; the required front yard setback is 30 feet.

Action

Requested: (1) a variance of 6 feet (6') from the required 30 feet (30') front yard setback to allow for the construction of a 132 square foot first floor residential addition; (2) a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage; (3) a variance of 2.7% from the required 15% maximum area coverage to allow for the construction of a residential addition and attached garage to provide first floor living accommodations for a disabled resident.

Mailing: Fifteen (15) surrounding property owners were notified. No comments were received as of March 3, 2016.

Applicant

Statement: Please see the enclosed application submitted by David J. Clark, property owner.

Staff Comments:

The applicant is requesting approval for three (3) variances, two from the front yard setback and one for maximum lot coverage.

Background

The property is considered Lot 22 of the Chimney Ridge Subdivision, which was recorded in 1975. The existing residence is considered legally non-conforming as it was permitted in error in 2000. As demonstrated on the site plan, the existing residential structure is 20 feet from the front lot line.

The proposed structure conforms to relevant zoning standards for minimum lot setbacks of the side yards, but does not conform to the minimum front or rear yard setbacks, or maximum lot coverage.

The proposed structures are designed to accommodate first floor living a disabled resident. There are two relevant federal acts that govern the responsibilities of a municipality with respect to people with disabilities. These are the Americans with Disabilities Act (ADA) and the Fair Housing Amendments Act (FHAA).

Section 12132 of the ADA states:

No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Peninsula Township is a public entity. The services, programs, or activities of Peninsula Township include anything that the Township does. Under the ADA the Zoning Board of Appeals' decisions cannot discriminate against individuals with disabilities.

Section 3604(f)(1) of the FHAA states that it is illegal to discriminate against a disabled individual by denying a dwelling to any buyer or renter because of a disability of that buyer or renter. Specifically, the definition of "discrimination" includes:

A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Both the ADA and FHAA define "disability" as a physical or mental impairment that substantially limits one or more major life activities of an individual. Examples of a major life activity include walking, seeing, hearing, and so forth. The severity and duration of the impairment is also considered. In this specific application, the property owner is unable to walk and requires use of a wheelchair. The physical impairment that limits the applicant's major life activity of walking is permanent in nature.

Regarding the responsibility of local government to accommodate a disabled individual, both the ADA and FHAA require that the Township:

Reasonably accommodate a disabled person by making changes in rules, policies, or services as is necessary to provide that person with access to housing that is equal to that of those who are not disabled.

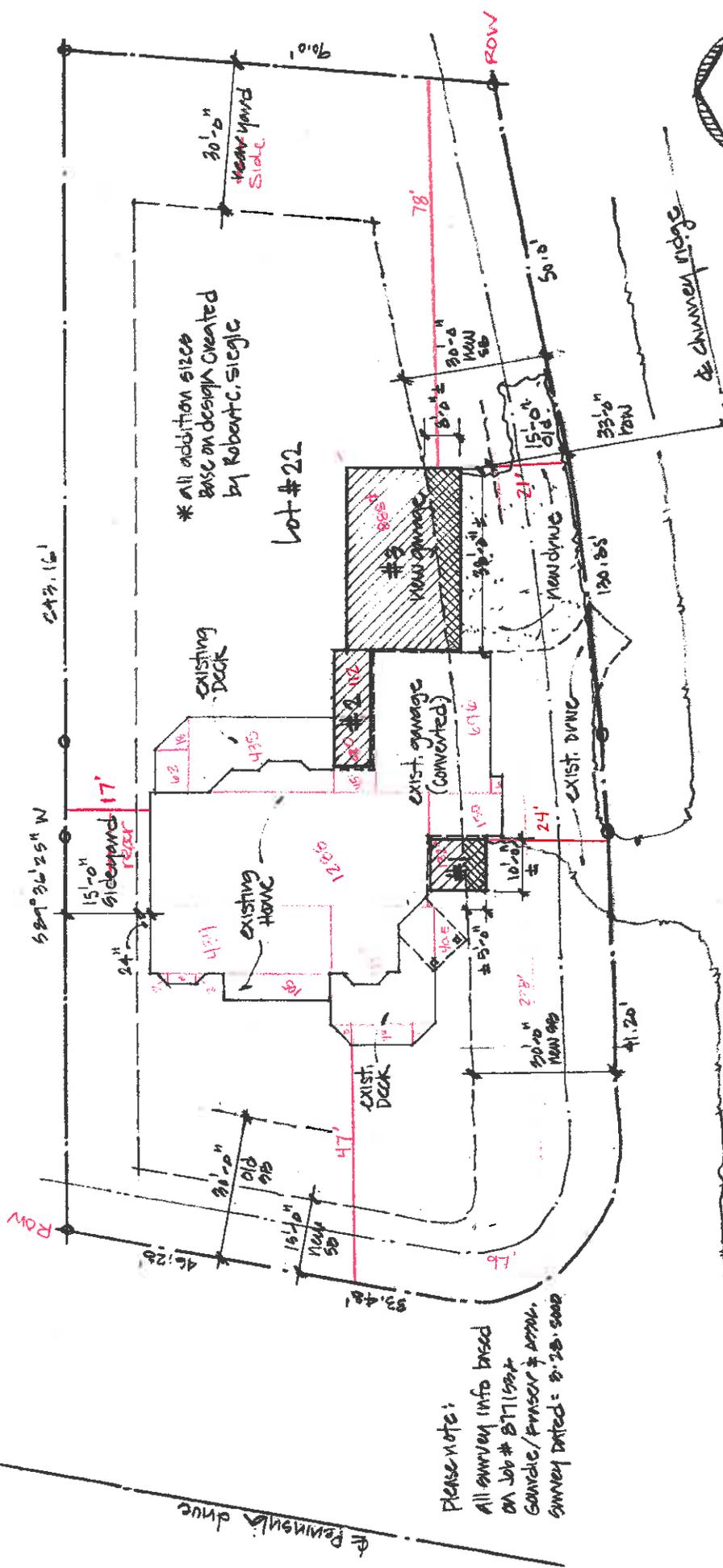
To comply with the ADA and FHAA the Township is not able to enforce the Zoning Ordinance in a manner that denies disabled individuals access to housing on par with that of those who are not disabled.

The proposed structures are designed to accommodate first floor living for a disabled resident. The Board shall not use the Ordinance standards to make this determination. Federal law trumps the Township standards.

The Board shall use the following standards to make this determination, according to the ADA and FHAA:

- (1) The requested variance(s) relates to an individual with a physical or mental impairment that substantially limits one or more of the major life activities of that individual.
- (2) The requested variance(s) is reasonable and necessary to afford the disabled resident the equal opportunity to use and enjoy their property.

The subject property, zoned R-1B, was created after the effective date of the Ordinance, and considered legally nonconforming. The property width is approximately 238 feet. The property length is approximately 97 feet. The applicant is a quadriplegic and needs a wheelchair due to a high level spinal cord injury.



* All addition sizes
BASE ON DESIGN CREATED
BY ROBERT C. SIGLE

Lot #22

Please note:
All survey info based
ON Job # BT115947
Gould, Pincer & Assoc.
Survey Dated: 8-28-2000

NEW ADDITION =

#1 - NEW LIVING =	97 SF
#2 - NEW LIVING =	200 SF
#3 - NEW GARAGE =	912 SF
	1211 SF (NEW)
	+ 4029 SF (EXIST.)
	5240 SF = 15.92% Coverage

52,000 SF
2,570 SF
1,113 SF
205 SF
540 SF
101 SF
4,629 SF
-540 SF
4089 SF = 14.6% Coverage

Overall lot of:
House - exist main floor:
garage - exist
Deck - front - exist
Deck - rear - exist
covered entry:

SITE PLAN - DAVE CLARK

Lot #22 CHURNEY RIDGE - TRAVERSE CITY, MI
11522 PENINSULA DRIVE
- 11522 PENINSULA DRIVE

REVISIONS: 2-04-16
2-12-16: PENINSULA TOWNSHIP. SET BACK CHANGE. FRONT VS. SIDE YARD.

Peninsula Township Planning & Zoning Department
FINDINGS OF FACT

ZBA Request #845 – 11522 Peninsula Dr.
March 10, 2016

DECISION AND ORDER

Applicant: David J. Clark, property owner

Hearing

Date: March 10, 2016

PROPERTY DESCRIPTION

The property of 11522 Peninsula Dr., Traverse City, MI 49686, Parcel No. 28-11-467-022-00, herein after referred to as the "property".

APPLICATION

Requests: (1) a variance of 6 feet (6') from the required 30 feet (30') front yard setback to allow for the construction of a 132 square foot first floor residential addition; (2) a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage; (3) a variance of 2.7% from the required 15% maximum area coverage to allow for the construction of a residential addition and attached garage to provide first floor living accommodations for a disabled resident.

The Board having considered the Application, a public hearing having been held on March 10, 2016, after giving due notice as required by law, the Board having heard the statements of the Applicant and agents, the Board after having considered letters submitted by members of the public and comments by members of the public, the Board having considered three (4) exhibits, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

1. The Board finds that the property is currently zoned Costal Zone Single and Two-family (R-1B). (Exhibits 1, 2)
2. The Board finds that a single family dwelling and attached garage are use by right in the R-1B district. (Exhibit 2)
3. The Board finds that the property is Lot 22 of the Chimney Ridge Subdivision which was recorded in 1975, after the adoption of the Zoning Ordinance. (Exhibit 5)
4. The board finds that the existing residential structure is legally non-conforming due to an error in permitting. (Exhibit 2)
5. The Board finds that the Applicant requests (1) a variance of 6 feet (6') from the required 30 feet (30') front yard setback to allow for the construction of a 132 square foot residential addition; (2) a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage; (3) a variance of 2.7% from the required 15% maximum area coverage to allow for the construction of a residential addition and attached garage.

Variance Request #1: a variance of 6 feet (6') from the required 30 feet (30') front yard setback to allow for the construction of a 132 square foot first floor residential addition to accommodate a disabled resident.

FINDINGS UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

The Board makes the following findings of fact as required by the ADA for each of the following standards:

1. The requested variance relates to an individual with a physical or mental impairment that substantially limits one or more of the major life activities of that individual.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is proposing to build an addition to provide first floor living accommodations and garage for a disabled resident who cannot walk, uses a wheelchair, and requires 24 hour assistance. (Exhibit 3)
- b. The Board finds that because this resident cannot walk and therefore uses a wheelchair, this impairment limits a major life activity, i.e. walking. (Exhibits 3, 4)
- c. The Board finds that this impairment of a major life activity is substantial because the impairment is permanent in nature for this individual. (Exhibit 4)
- d. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

2. The requested variance is reasonable and necessary to afford the disabled resident the equal opportunity to use and enjoy their property.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is proposing to build an addition to provide first floor living accommodations and garage for a disabled resident who cannot walk, uses a wheelchair, and requires 24 hour assistance. (Exhibit 3)
- b. The Board finds that because this resident cannot walk and therefore uses a wheelchair, this impairment limits a major life activity, i.e. walking. (Exhibits 3, 4)
- c. The Board finds that according to Section 6.2.2(1) a single-family dwelling is a use by right in the R-1B district. (Exhibit 2)
- d. The Board finds that the applicant proposes to build first floor ADA compliant living and bathroom facilities (Exhibit 3).
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

VARIANCE REQUEST #1 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of 6 feet (6') from the required 30 feet (30') front yard setback to allow for the construction of a 132 square foot first floor residential addition to accommodate a disabled resident.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #1 be **APPROVED / DENIED**.

TIME PERIOD FOR JUDICIAL REVIEW

Mcl 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

Variance Request #2: a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage to accommodate a disabled resident.

FINDINGS UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

The Board makes the following findings of fact as required by the ADA for each of the following standards:

1. The requested variance relates to an individual with a physical or mental impairment that substantially limits one or more of the major life activities of that individual.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is proposing to build an addition to provide first floor living accommodations and garage for a disabled resident who cannot walk, uses a wheelchair, and requires 24 hour assistance. (Exhibit 3)
- b. The Board finds that because this resident cannot walk and therefore uses a wheelchair, this impairment limits a major life activity, i.e. walking. (Exhibits 3, 4)
- c. The Board finds that this impairment of a major life activity is substantial because the impairment is permanent in nature for this individual. (Exhibit 4)
- d. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

- 2. The requested variance is reasonable and necessary to afford the disabled resident the equal opportunity to use and enjoy their property.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is proposing to build an addition to provide first floor living accommodations and garage for a disabled resident who cannot walk, uses a wheelchair, and requires 24 hour assistance. (Exhibit 3)
- b. The Board finds that because this resident cannot walk and therefore uses a wheelchair, this impairment limits a major life activity, i.e. walking. (Exhibits 3, 4)
- c. The Board finds that according to Section 6.2.2(1) an attached garage is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district. (Exhibit 2)
- d. The Board finds that the resident requires an extended garage to accommodate a wheelchair accessible minivan for the disabled resident, as well as space for the 24 hour caretakers' vehicles (Exhibit 3).
- e. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

VARIANCE REQUEST #2 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage to accommodate a disabled resident.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #1 be **APPROVED / DENIED**.

TIME PERIOD FOR JUDICIAL REVIEW

Mcl 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of

Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

Variance Request #3: a variance of 2.7% from the required 15% maximum area coverage to allow for the construction of a residential addition and attached garage to provide first floor living accommodations for a disabled resident.

FINDINGS UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

The Board makes the following findings of fact as required by the ADA for each of the following standards:

1. The requested variance relates to an individual with a physical or mental impairment that substantially limits one or more of the major life activities of that individual.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is proposing to build an addition to provide first floor living accommodations and garage for a disabled resident who cannot walk, uses a wheelchair, and requires 24 hour assistance. (Exhibit 3)
- b. The Board finds that because this resident cannot walk and therefore uses a wheelchair, this impairment limits a major life activity, i.e. walking. (Exhibits 3, 4)
- c. The Board finds that this impairment of a major life activity is substantial because the impairment is permanent in nature for this individual. (Exhibit 4)
- d. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

2. The requested variance is reasonable and necessary to afford the disabled resident the equal opportunity to use and enjoy their property.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is proposing to build an addition to provide first floor living accommodations and a garage for a disabled resident who cannot walk, uses a wheelchair, and requires 24 hour assistance. (Exhibit 3)
- b. The Board finds that because this resident cannot walk and therefore uses a wheelchair, this impairment limits a major life activity, i.e. walking. (Exhibits 3, 4)
- c. The Board finds that according to Section 6.2.2(1) a single-family dwelling and attached garage are use by right in the R-1B district. (Exhibit 2)

- d. The Board finds that the applicant proposes to build first floor ADA compliant living and bathroom facilities (Exhibit 3).
- e. The Board finds that the resident requires an extended garage to accommodate a wheelchair accessible minivan for the disabled resident, as well as space for the 24 hour caretakers' vehicles (Exhibit 3).
- f. The Board finds that

The following findings may support this standard HAS NOT been met.

- a. The Board finds that

This standard HAS / HAS NOT been met.

VARIANCE REQUEST #3 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #1 be **APPROVED / DENIED**.

TIME PERIOD FOR JUDICIAL REVIEW

Mcl 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

DATE DECISION AND ORDER ADOPTED

Date

Chairperson

Date

Vice Chairperson

Secretary

Peninsula Township Planning & Zoning Department
EXHIBIT LIST

ZBA Request No. 845 – 11522 Peninsula Dr.
March 10, 2016

EXHIBIT LIST

1. Peninsula Township Master Plan
2. Peninsula Township Zoning Ordinance
3. Request for Variance filed by David J. Clark
4. Staff report from Peninsula Township Planning & Zoning Department
5. Chimney Ridge Subdivision Plat

Law Offices of _____
DAVID J. CLARK, P.C.

P.O. Box 294
106 Rose Street
Traverse City, MI 49686

231-946-1282
Fax 231-946-1283

David J. Clark
Email: *DJCLAWTC@AOL.COM*

February 10, 2016

Peninsula Township
Zoning Department
13325 Center Road
Traverse City, MI 49686

RE: application for zoning variance / 11522 Peninsula Drive

TO WHOM IT MAY CONCERN:

I am seeking a variance from the 15% building coverage(sec 6.8 PTZO) for a particular building parcel for my existing home located at 11522 Peninsula Dr., Traverse City, Michigan. I seek a variance to allow us to add approximately 1211 square feet to our existing home. That will make a total of 5,300 square feet, or 18.92% of property the house sits on.

My family dynamics have changed significantly which necessitates any an ADA compliant addition to my home. The current garage would be converted into an ADA compliant living spaces with an ADA compliant bathroom. Then to replace the garage, I am seeking to add additional space for a three car garage. One space has be extrawide to accommodate my wheelchair accessible minivan. It has a ramp that comes out the passenger-side then I would need further space to maneuver after I got out of the minivan and off the ramp.

My wife, Mary, was my sole care provider for over 40 years. She passed away in November 2014. Prior to her death and free while thereafter, I was using an agency for my full-time care. And that became problematic. And now, the best resolution for me to remain living in my own home, it seems reasonable that I need full-time , live-in caregivers. (For my personal care, cooking and cleaning and laundry ,shopping, maintenance of the house and yard).My daughter her husband and their three children have moved into my home and provide all the services that were referenced. We simply do not have enough space for all of us to live and enjoy our privacies. We have researched this issue and talked to other families in similar situations. We are not looking at a short-term situation. My life expectancy is around 15 to 20 years.

I have researched this issue and discovered this board may find guidance within The Americans with Disability Act (ADA).

Part II of the ADA prohibits discrimination against disabled persons, or denial of the benefits, services and programs of local government on the basis of disability.

According to the regulations implementing the ADA:

"A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity."

These "policies, practices and procedures" include local zoning ordinances. According to the Title II Technical Assistance Manual published by the Department of Justice includes the following commentary:

II-306000. Reasonable modifications.

II-3.6100 General. A public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate, however, that the modifications would fundamentally alter the nature of its service, program, or activity, it is not required to make the modification.

ILLUSTRATION 1: A municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district. In order to install a ramp to the front entrance of a pharmacy, the owner must encroach on the set-back by three feet. Granting a variance in the zoning requirement may be a reasonable modification of town policy."

An example of court cases in which municipalities were found to have violated the ADA by not waiving general ordinance requirements is a situation in which a disabled homeowner sought to build a paved parking space in front of their home. Another example involved an ordinance which prohibited front or side driveways.

The fact that there might be other alternatives which comply with the zoning ordinance is not sufficient; the focus is on whether the modification would afford people with disabilities the same opportunities those without disabilities. Thus, for example, a request to expand a garage to accommodate an indoor wheelchair ramp to an internal door could not be denied merely because an outdoor wheelchair ramp to the front door could be constructed in compliance with the zoning ordinance. The ability to have indoor access from a vehicle, especially during winter months, may be necessary to allow a person with a disability the same enjoyment of their home as other persons.

In order to qualify for a reasonable modification of the zoning ordinance under the ADA, an applicant need not meet the requirements for a variance.

Rather, the applicable test is:

Whether the person to be accommodated has a disability.

Whether the modification requested is reasonably necessary to accommodate that disability.

Whether the modification would fundamentally and unreasonably alter the nature or purposes of the zoning ordinance. The burden is on the municipality to prove this would occur.

I believe my zoning variance request qualifies under the above standards of part II of the Americans with disability act .First I have a disability. .First I have a disability. I don't think that can be challenged. And my modification is requested to reason me accommodate that disability. I.e. to convert the existing garage into an ADA compliant living space. To free up space in the home to accommodate my caregivers. Then to add additional space for a three car garage, of which the majority of we utilized to construct ramps to get into the new ADA compliant area and for a extrawide garage stall. And I do not believe that Grady doesn't variance would fundamentally and unreasonably alter the purpose of the density (15%) ordinance. After learning of this provision, I started to take note of the many properties along Peninsula Drive, especially those on the water where you really touch the heart or obviously the building structure takes up much more than 15% of the square footage of the property..

I will be available at the public hearing to answer a question and you may have.

Respectfully,

David Clark

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Peninsula Township Variance Application

Application Guidelines

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

1. Zoning Board of Appeals (ZBA) applications are available from the Peninsula Township Planning & Zoning Department, 7:30 a.m. to 6:30 p.m., Monday, and 7:30 a.m. to 5:00 p.m. Tuesday through Thursday, or online at www.peninsulatownship.com/zoning.
2. **Applications must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the ZBA meeting. Ten (10) copies must be submitted.**
3. If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.
4. It is the applicant's responsibility to review and address the appropriate sections of the Zoning Ordinance prior to submission.
5. It is the applicant's responsibility to ensure that the application is complete upon submission. **Planning and Zoning Department staff will determine and confirm with the applicant that the application is complete.** An incomplete application will not be considered for review by the ZBA.
6. The application will be forwarded to members of the ZBA for a public hearing.
7. A notice of the public hearing must be mailed to the property owners and occupants within three hundred (300) feet of the subject property not less than fifteen (15) days before the public hearing.
8. The applicant will receive a notice of the public hearing in the mail, and is expected to attend the meeting.
9. ZBA meetings are held on the second Thursday of every month, beginning at 7:00 p.m. in the Township Hall, 13235 Center Road, Traverse City, MI 49686.
10. If the variance(s) are granted, **construction authorized by such variance(s) must begin within six (6) months after the granting of the variance, and the occupancy of land, premises, or buildings authorized by the variance must take place within one (1) year after the granting of the variance.**
11. If the variance(s) are granted, construction authorized by such variance(s) must comply with all other necessary permits. **A variance is independent from, and does not substitute for, all other permits.**
12. No application for a variance which has been denied wholly or in part by the Board shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.

OFFICE USE ONLY		
Date Received:	Fee Received:	Board Action:
Date Complete:	Meeting Date:	

Peninsula Township Variance Application

Practical Difficulty Worksheet

In order for a variance to be justified, the applicant must demonstrate that strict application of the provisions of the Peninsula Township Zoning Ordinance to petitioned property would result in **Practical Difficulty** (defined in Article III of the Ordinance) inconsistent with the general purpose and intent of the Ordinance.

The Applicant must answer the following questions pertaining to practical difficulty in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 3.2, Practical Difficulty: To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating **all** of the following:

1. **Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome.**

Is this condition met? Please explain: See Attached

2. **A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others.**

Is this condition met? Please explain: See Attached

3. **The plight of the owner is due to unique circumstances of the property.**

Is this condition met? Please explain: the plight of the owner is due to the conservative 15% adopted by Peninsula Township.

4. **The problem was not self-created.**

Is this condition met? Please explain: Applicant does not believe the problem was self created

Peninsula Township Variance Application

Basic Conditions Worksheet

In order for a variance to be justified, the Applicant must meet **all of the Basic Conditions**, as defined in Section 5.7.3(1) of the Peninsula Township Zoning Ordinance. The Applicant must answer the following questions pertaining to the Basic Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(1) Basic Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided all of the Basic Conditions listed herein can be satisfied.**

(1) **BASIC CONDITIONS:** The applicant must meet ALL of the following Basic Conditions. That any variance from this Ordinance:

a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

Is this condition met? Please explain: _____

See attached

b. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

Is this condition met? Please explain: _____

N/A

c. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

Is this condition met? Please explain: Variance will not cause any effect on property values nearby

d. Is not where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.

Is this condition met? Please explain: Var^{emts}

N/A

e. Will relate only to property that is under control of the applicant.

Is this condition met? Please explain: Variance will only relate to

property located at 11522 Peninsula Drive

Peninsula Township Variance Application

Special Conditions Worksheet

In order for a variance to be justified, the applicant must meet at least one of the Special Conditions, as defined in Section 5.7.3(2) of the Peninsula Township Zoning Ordinance. The applicant must answer the following questions pertaining to the Special Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(2) Special Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, provided at least one of the Special Conditions listed herein can be satisfied.

(2) **SPECIAL CONDITIONS:** When ALL of the foregoing Basic Conditions can be clearly demonstrated, the applicant must meet at least ONE of the following Special Conditions:

- a. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

Is this condition met? Please explain: _____
See Attached

- b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted for any act of the applicant subsequent to the adoption of this Ordinance.

Is this condition met? Please explain: _____
N/A

- c. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.

Is this condition met? Please explain: _____
See Attached

- d. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

Is this condition met? Please explain: _____
N/A

ATTACHMENT TO APPLICATION

PRACTICAL DIFFICULTIES

1. Strict conformity with the ordinance would be unnecessary burdensome the applicant. Without the ability to construct an ADA compliant living space, applicant would most likely have to move not be able to live in is premises.

2. A variance when due substantial justice to the applicant and others property owners in the district. Applicant knows most of his neighbors and each are comfortable with the other. Granting of the variance would have no adverse effect on any other property owner.

3. The plight of the owner is due to the conservative 15% adopted by Peninsula Township.

4. Applicant does not believe the problem was self-created.

BASIC CONDITIONS

(1) (a) the variance is not contrary to public interest for the intent and purpose of the ordinance. Public interest would encourage families to be able to live in their own home rather than in the system care and/or nursing homes. And the nature and makeup of the proposed location for the addition will not compromise anyone's use and enjoyment of their property.

(1) (b) not applicable

(1) © the variance will not cause any effect on property values.

(1) (d) not applicable

(1) (e) variance will only relate to the property located at 11522 Peninsula Dr.

SPECIAL CONDITIONS

(2) (a) special difficulties.. Applicant seeks to put a barrier free addition onto the existing home. And to do so seeks a variance to that part of the ordinance, limiting building area to 15% of the square footage of the particular parcel of land. The current building currently covers 14.6% of the square footage of the parcel of land.

(2) (b) not applicable

(2) © applicant is unsure when the subdivision plan was approved, and whether or not that was approved prior to the original adoption of the Peninsula Township zoning ordinance in 1972. Further applicant is unaware when the 15% rule was adopted. And whether or not that was part of the original 1972 zoning ordinance or that was later adopted.

(2) (d) not applicable.

DAVID J. CLARK
11522 Peninsula Drive
106 Rose Street
Traverse City, MI 49686

231-946-1282
Fax 231-946-1282

Email: DJCLAWTC@AOL.COM

ADA SUPPLEMENT

RE: application for zoning variance / 11522 Peninsula Drive

I have a disability. I am a high level spinal cord injured quadriplegic. And have been so almost 44 years. I require assistance up to 24 hours a day. Or at least supervision while I sleep.

And my variance as requested is reasonable and necessary for me to remain living in my home. And the requested space has to be larger to accommodate barrier free pathways. As well as the larger garage facilitate the parking my vehicle.

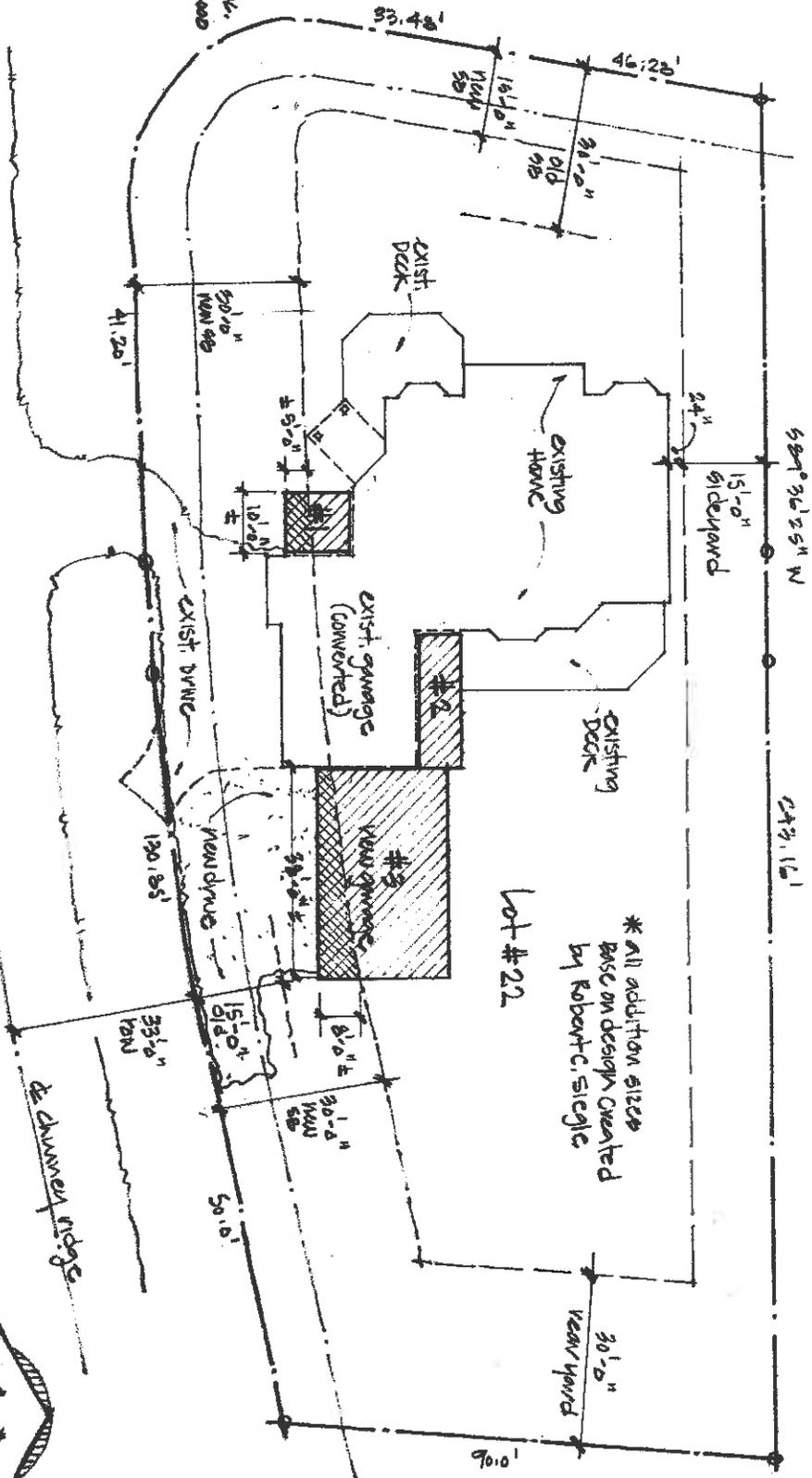
I will be available at the public hearing to answer any questions you may have.

Respectfully,

David Clark

← Peninsula drive

Please note:
 All survey info based
 on Job # 8711592.
 Gaudin/Parsons & Assoc.
 Survey dated: 3-28-2000



SITE PLAN - DAVE CLARK

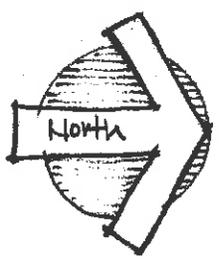
lot # 22 CHIMNEY RIDGE - Traverse City, MI
 11522 Peninsula Drive
 VARIANTS: 2-04-16
 2-12-16 - Peninsula township. Set back change. front vs. side yard.

Overall lot sq ft:
 House - exist main floor:
 garage - exist:
 Deck - front - exist:
 Deck - rear - exist:
 Covered entry:

289,000 sq ft
 2,570 sq ft
 1,118 sq ft
 305 sq ft
 540 sq ft
 101 sq ft
 4,029 sq ft
 -540 sq ft
 4089 sq ft = 14.16% Coverage

NEW addition:
 #1 - new living: 99 sq ft
 #2 - new living: 200 sq ft
 #3 - new garage: 912 sq ft

1211 sq ft (new)
 + 4089 sq ft (exist.)
 5300 sq ft = 15.92% Coverage



* All addition sizes
 based on design created
 by Robert C. Siegle

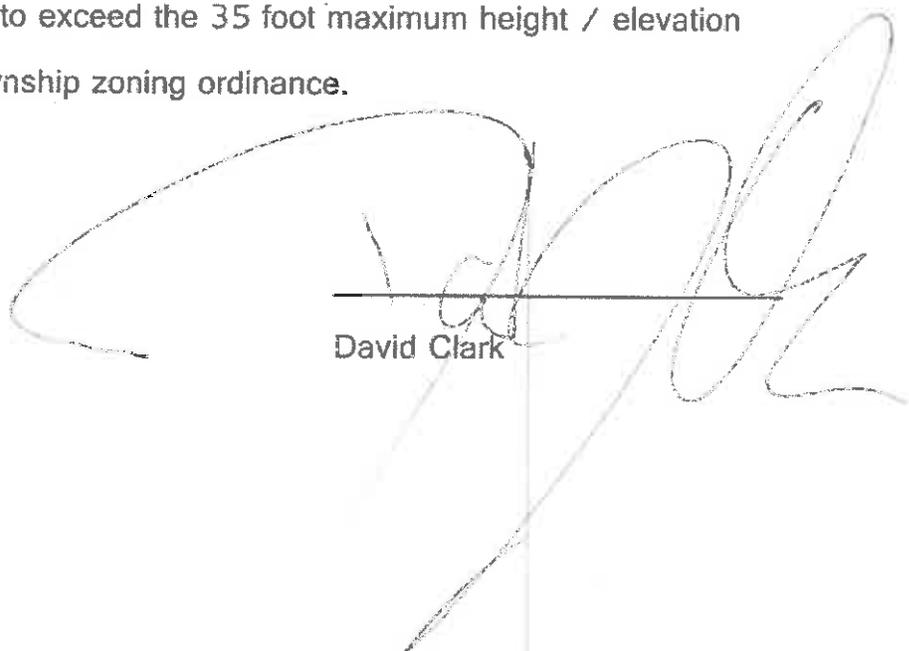
Lot # 22

March 3, 2016

Peninsula Township zoning Board of appeals

To whom it may concern

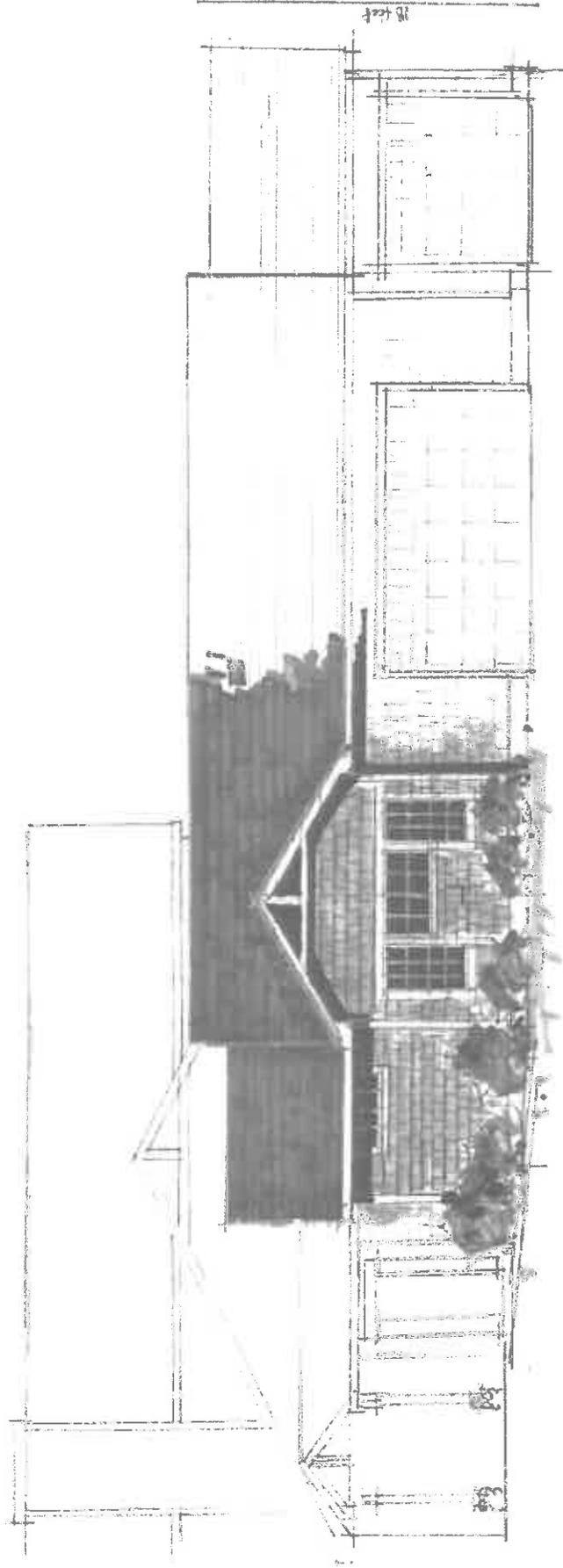
I have been informed that I need to submit a front elevation for my proposed addition to my house. And that is enclosed with this note. The proposed addition will have an elevation not to exceed 18 feet. And upon information and belief, the second story on the existing house, is less than 35 feet. And the proposed addition, is simply one story as opposed to two stories. And none of it is expected to exceed the 35 foot maximum height / elevation requirement Peninsula Township zoning ordinance.



David Clark

CLARK/LUDKA

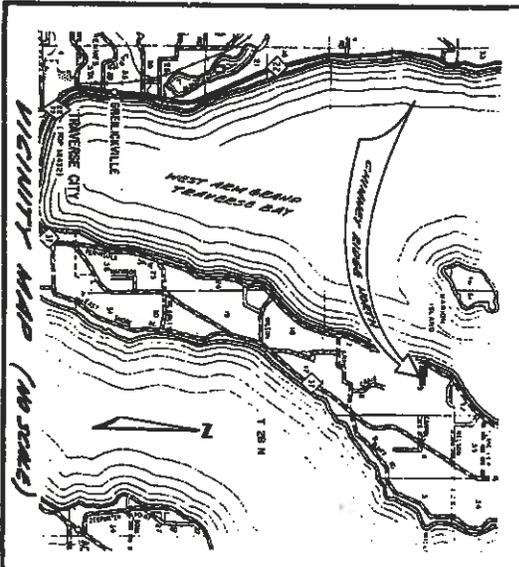
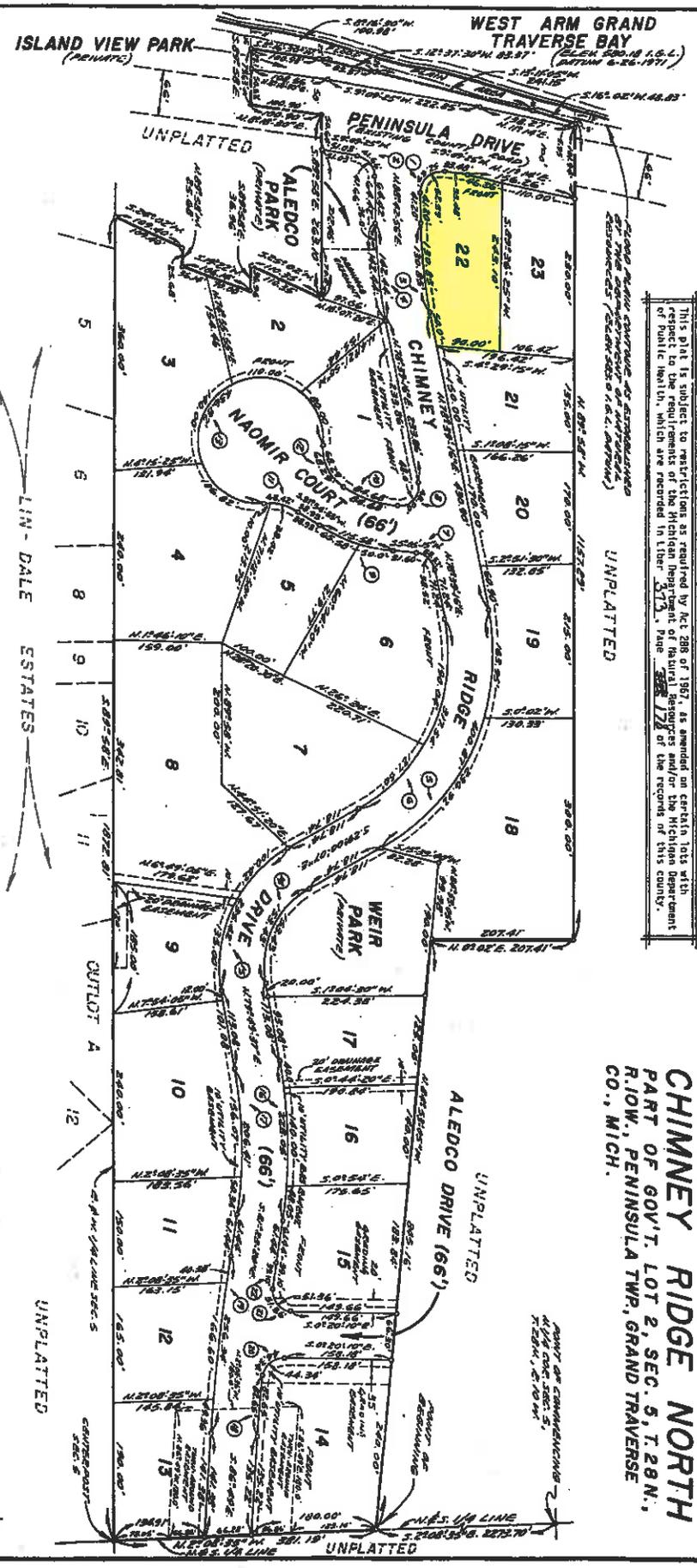
PRELIMINARY PLANS
FOR THE CONSTRUCTION
OF A HOUSE



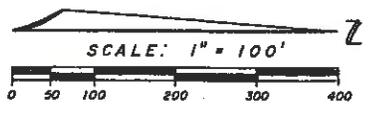
SOUTH ELEVATION
10/20/14

CHIMNEY RIDGE NORTH
 PART OF 60V'T. LOT 2, SEC. 5, T. 29N.,
 R. 10W., PENINSULA TWP., GRAND TRAVERSE
 CO., MICH.

This plot is subject to restrictions as required by Act 388 of 1957, as amended on certain lots with reference to the Michigan Department of Public Health, which are recorded in Liber 172 of the records of this county.



CURVE DATA		CHORD	
NO.	RADIUS	DETH.	ARC
1	30.00	100°-28'-31"	52.59
2	74.50	75°-23'-42"	131.88
3	4.00	10°-03'-40"	142.44
4	811.18	72°-20'-37"	400.87
5	317.49	72°-20'-37"	317.54
6	251.49	72°-20'-37"	317.54
7	30.00	73°-34'-00"	38.52
8	25.84	106°-28'-00"	48.00
9	180.00	26°-48'-40"	18.58
10	180.00	26°-48'-40"	18.58
11	80.00	34°-40'-53"	48.42
12	180.00	26°-48'-40"	18.58
13	61.71	63°-28'-22"	68.28
14	123.52	71°-0'-16"	153.43
15	658.52	71°-0'-16"	436.42
16	180.00	26°-48'-40"	18.58
17	629.62	18°-47'-02"	208.05
18	2639.86	05°-25'-40"	256.34
19	30.00	94°-41'-12"	44.34
20	30.00	94°-41'-12"	44.34
21	30.00	94°-41'-12"	44.34
22	2839.86	00°-50'-55"	51.58



- LEGEND**
- All dimensions are in feet.
 - All curve/lineer dimensions are arc lengths.
 - Concrete monuments have been placed at all lot corners have been marked with 1/2" iron pipe 18" long.
 - All lot lines intersecting curvilinear street or boundary lines are nonradial.
 - Bearings were established from the recorded part of the DALLAS Easement, recorded in Liber 10, Page 82 and 83 of Plans.

54742



GOURDIE • FRASER & ASSOCIATES INC
 184 W. STATE ST. GRAND TRAVERSE, MICH. 49735
 ARCHITECTS • ENGINEERS • LAND PLANNERS • LAND SURVEYORS

PROJECT NO. 73386

CHIMNEY RIDGE NORTH

PART OF GOV'T. LOT 2, SEC. 5, T.28N.,
R.10W., PENINSULA TWP., GRAND TRAVERSE
CO., MICH.

SURVEYOR'S CERTIFICATE
I, Richard A. Redemaker, Surveyor, certify:
That I have surveyed, divided and mapped the land shown on this plat, described as follows: CHIMNEY RIDGE NORTH, Part of Gov't. Lot 2, Sec. 5, T.28 N., R.10 W., Peninsula Twp., Grand Traverse Co., Mich., more fully described as: Commencing at the north corner of said Section 5; thence South 24°-02' East 171.71 feet to the point of Beginning; thence North 84°-23' 55" West, 694.16 feet to the point of Beginning; thence North 0°-02' East, 207.41 feet; thence North 89°-58' (leat arm); thence along said traverse line the following courses: South 18°-02' West, 48.89 feet; South 13°-11'-00" West, 241.19 feet; South 18°-37'-50" West, 83.37 feet; South 8°-30' West, 100.98 feet; thence along said traverse line South 89°-58' East, 179.53 feet to the center line of said Section 5; thence South 89°-58' East, 263.10 feet; thence South 19°-22' 11'-03 feet; thence South 89°-58' East, 25.56 feet; thence South 24°-02' West, 106.14 feet; thence North 89°-58' West, 25.66 feet; thence South 24°-02' West, 106.14 feet to the east and west quarter line of said Section 5; thence South 89°-58' East, 107.21 feet, along said east and west quarter line to the center line of said Section 5; thence North 2°-08'-35" West, 201.19 feet, along the north and south quarter line of said Section 5 to the point of Beginning. Containing 23 lots numbered 1 through 23 and 2 private parts.
That I have made such survey, land-division and plat by the direction of the owners of such land.
That such plat is a correct representation of all the exterior boundaries of the land surveyed and the subdivision of it.
That the required monuments and lot markers have been located in the ground or that survey has been deposited with the municipality, as required by Section 123 of the Act.
That the accuracy of survey is within the limits required by Section 126 of the Act.
That the bearings shown on the plat are expressed as required by Section 126 (3) of the Act and as explained in the legend.



COMRADE, FRASER & ASSOCIATES, INC.
Richard A. Redemaker,
Registered Land Surveyor #11768
128 West State Street
Traverse City, Michigan 49884
Vice President

PROPRIETOR'S CERTIFICATE
We as proprietors certify that we caused the land embraced in this plat to be surveyed, divided, mapped and dedicated as represented on this plat and that the roads are for the use of the public; that the public utility easements are private easements and that all other easements are for the uses shown on the plat; that the plat includes all land to the waters edge; and that Water Park, Alisco Park, and Island View Park are private and for the use of the lot owners of this plat and all other parts in Section 5, T.28 N., R.10 W., where trackage is traceable to this proprietor.
Richard A. Redemaker
Gerald C. Shultz
3728 Old Mission Road
Traverse City, Michigan 49884
Meredith C. Shultz
3728 Old Mission Road
Traverse City, Michigan 49884
Richard A. Redemaker, Notary Public
Grand Traverse County, Michigan
My commission expires 3-18-78

PROPRIETOR'S CERTIFICATE
We as proprietors certify that we caused the land embraced in this plat to be surveyed, divided, mapped and dedicated as represented on this plat and that the roads are for the use of the public; that the public utility easements are private easements and that all other easements are for the uses shown on the plat; that the plat includes all land to the waters edge; and that Water Park, Alisco Park, and Island View Park are private and for the use of the lot owners of this plat and all other parts in Section 5, T.28 N., R.10 W., where trackage is traceable to this proprietor.
Doris E. Newkome
William E. Miller
William E. Miller
Cook Road
Hillmanburg, Michigan 49890
Edward G. Balyas
William E. Miller
Cook Road
Hillmanburg, Michigan 49890

ACKNOWLEDGMENT
State of Michigan } ss.
Personally came before me this 2nd day of October, 1974, the above named William E. Miller and Doris E. Miller, his wife, to me known to be the owners of the land described in the foregoing instrument and acknowledged that they executed the same as their free act and deed.
Richard P. Smith, Notary Public
Grand Traverse County, Michigan
My commission expires April 3, 1976

PROPRIETOR'S CERTIFICATE - CORPORATION
Alisco, a corporation duly organized and existing under the laws of the State of Michigan, as proprietor, has caused the land to be surveyed, divided, mapped and dedicated as represented on this plat and that the roads are for the use of the public; that the public utility easements are private easements and that all other easements are for the uses shown on the plat; that the plat includes all land to the waters edge; and that Water Park, Alisco Park, and Island View Park are private and for the use of the lot owners of this plat and all other parts in Section 5, T.28 N., R.10 W., where trackage is traceable to this proprietor.
ALISCO, INC.
2208 E. Tupperlane
Traverse City, Michigan 49884
Earl G. Stewart
Kevin C. Schreck, President
Doris E. Newkome
William E. Miller, Secretary-Treasurer
W. Allan Hays, Secretary-Treasurer

ACKNOWLEDGMENT
State of Michigan } ss.
Personally came before me this 2nd day of December, 1974, the above named William E. Miller and Doris E. Miller, his wife, to me known to be the owners of the land described in the foregoing instrument and acknowledged that they executed the same as their free act and deed.
Paul E. Curtis, Notary Public
Grand Traverse County, Michigan
My commission expires April 3, 1976

ACKNOWLEDGMENT
State of Michigan } ss.
Personally came before me this 21st day of April, 1975, the above named Gerald C. Shultz and Mary Ann Shultz, his wife, to me known to be the owners of the land described in the foregoing instrument and acknowledged that they executed the same as their free act and deed.
Richard A. Redemaker, Notary Public
Grand Traverse County, Michigan
My commission expires 3-18-78

COUNTY TREASURER'S CERTIFICATE
The records in my office show no unpaid taxes or special assessments for the five years preceding Dec 3, 1972, involving the lands included in this plat.
Dean F. Sheets, Treasurer
Grand Traverse County

COUNTY DRAIN COMMISSIONER'S CERTIFICATE
Approved on JAN 15, 1975 as complying with section 192 of Act 280, P. A. 1967 and the applicable rules and regulations published by my office in the County of Grand Traverse.
Raymond Williams, Grand Drain Commissioner

CERTIFICATE OF COUNTY ROAD COMMISSIONERS
Approved on Jan 15, 1975 as complying with section 183 of Act 280, P. A. 1967 and the applicable published rules and regulations of the Board of Road Commissioners of Grand Traverse County.
Richard J. Seftell, Member
Arthur Schwaback, Member

CERTIFICATE OF MUNICIPAL APPROVAL
I certify that this plat was approved by the Township Board of Peninsula Township, at a meeting held Feb 5, 1975 and was reviewed and found to be in compliance with Act 280, P. A. 1967. Approval, October 1, 1974 by the Grand Traverse-Leelanau-Benzie District Health Department.
Henry E. Kroll, Clerk

COUNTY PLAT BOARD CERTIFICATE
This plat has been reviewed and is approved by the Grand Traverse County Plat Board on March 17, 1975 being in compliance with all of the provisions of Act 280, P. A. 1967, and the plat board's applicable rules and regulations.
Hester E. Himmelfarb, County Clerk
Gregory Chaberski, Register of Deeds

RECORDING CERTIFICATE
State of Michigan } ss.
This plat was received for record on the 5th day of April, A.D. 1975 at 12:30 P. M., recorded in Liber 13 of plats on Page 54712.
Hester E. Himmelfarb, Register of Deeds

COURTIE, FRABER AND ASSOCIATES, INC.
184 WEST STATE, TRAVERSE CITY, MICHIGAN 49884
108 EAST WASHINGTON, MARQUETTE, MICHIGAN 49886
PROJECT NO. 73586

**PENINSULA TOWNSHIP ZONING BOARD OF APPEALS
November 12, 2015**

Meeting called to order at 7:00 p.m.

PRESENT: Elliott (alternate) Snow (alternate); Soutar, Witkop and Wunsch

ALSO PRESENT: Michelle Reardon, Director of Planning and Zoning; Claire Schoolmaster, Planning and Zoning Coordinator and Mary Avery, Recording Secretary

ABSENT: Vida, Cowall (excused)

Soutar thanked Laura Serocki for her service on the Zoning Board of Appeals.

Approval of the Agenda

MOTION: Elliott/Snow to approve the Agenda as presented.

MOTION PASSED

Review for Conflict of Interest

None

Communication Received

Reardon advised there is a letter of support for the applicant from the Harbor Beach Association.

Public Input

None

Scheduled Public Hearings

A. Request No. 841, Zoning R-1B

Applicant: Shane Bullough, 6699 Peninsula Dr., Traverse City, MI 49686

Owner: Lee Ann Bullough Trust, 897 Gray Rd., Traverse City, MI 49686

Property Address: 10353 Peninsula Dr., Traverse City, MI 49686

Requests: (1) a variance of 21 feet from the required 60 feet Ordinary High Water Mark setback for a previously constructed non-conforming fire pit and (2) a variance of 22 feet from the required 60 feet Ordinary High Water Mark setback for a previously constructed non-conforming retaining wall.

Parcel Code No. 28-11-007-015-00

Reardon presented the request.

Elliott asked the applicant if there was a landscape architect used. **Bullough** advised that his wife and the landscape architect designed the area.

Witkop reviewed the chain of events. Verified there was a house and retaining wall at time of purchase. The home was torn down. The applicant advised it was about one year after purchasing the property that they tore down the house.

Elliott asked if there was a reason the patio was not built 20 feet the other way? If you had known, would you have moved it over? **Bullough** advised no, we would have put up a fence.

The applicant advised they could not have built the patio if they did not have the retaining wall.

Matt Vermetten, Attorney for Mr. Bullough, 600 E. Front Street client contacted the Township to see what was required for a patio. He needed a soil & erosion permit and MDEQ. After that he learned what else had to be taken into account a Township permit was required. The premise of building why it was done is because to enhance the view shed of those walking or biking along Peninsula Drive without blocking the views of the South and North. The fire pit could have been placed closer to the road but it does not make any sense. The topography of the property makes it impossible to do this type of project and this was the driving force to build the patio and retaining wall.

Shane Bullough 6699 Peninsula Drive I went to soil and erosion because Crafts advised that is it was just a patio and only a soil and erosion was needed. After building it I was called because there was a problem with the fire pit structure. The intention on building it that way because we wanted privacy for the fire pit and distance from the road because it is fairly close. We did not want to put a fence up. For safety for the kids off of the street and privacy we felt this was better. Both associations and one house on one side and both houses on the other side support the project as it maintains the view for them. The mistake was that I did not second guess Crafts. If the question is the danger of the proximity to the water there is a sea wall and we are elevated to about 12 feet.

Public comment opened at 7:50.

Margaret Achorn 11284 Peninsula Drive bought their house in 2007 knowing the stair to the beach was unsafe. We were told we could not move the steps. We followed the rules, came to the Township with our plans. The applicant should have brought his plans to the Township also.

Public Hearing closed at 7:51.

Peninsula Township Planning & Zoning Department
FINDINGS OF FACT

ZBA Request #841 – 10353 Peninsula Dr.
November 12, 2015

DECISION AND ORDER

Applicant: Shane Bullough, appointed representative of property owner

**Hearing
Date:** November 12, 2015

PROPERTY DESCRIPTION

The property of 10353 Peninsula Dr., Traverse City, MI 49686, Parcel No. 28-11-007-015-00, herein after referred to as the "property".

APPLICATION

Requests: (1) a variance of 21 feet from the required 60 feet Ordinary High Water Mark setback for a previously constructed non-conforming fire pit and (2) a variance of 22 feet from the required 60 feet Ordinary High Water Mark setback for a previously constructed non-conforming retaining wall.

The Board having considered the Application, a public hearing having been held on November 12, 2015, after giving due notice as required by law, the Board having heard the statements of the Applicant and agents, the Board after having considered letters submitted by members of the public and comments by members of the public, the Board having considered four (4) exhibits, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

1. The Board finds that the property is currently zoned Coastal Zone Single and Two-Family (R-1B). (Exhibits 1, 2)
2. The Board finds these are accessory structures that support the enjoyment of the waterfront, which is the intended use of the property. (Exhibit 2)
3. The Board finds that the existing structures are illegal non-conforming structures and were built after the demolition of the original structures in 2013, after the effective date of the Zoning Ordinance. (Exhibits 2, 4)
4. The Board finds that the existing fire pit does not conform to relevant zoning standards. (Exhibits 2, 3, 4)
5. The Board finds that the existing retaining wall does not conform to relevant zoning standards. (Exhibits 2, 3, 4)
6. The Board finds that according to Section 4.1.3(1) the existing accessory structures did not require a land use permit from staff at the time of construction, but shall comply with the setback requirements listed in the Ordinance. (Exhibit 2)

7. The Board finds that the applicant requests (1) a variance of 21 feet from the required 60 feet Ordinary High Water Mark setback for a previously constructed non-conforming fire pit and (2) a variance of 22 feet from the required 60 feet Ordinary High Water Mark setback for a previously constructed non-conforming retaining wall (Exhibit 3).

MOTION: Witkop/Snow to approve the general findings of fact

ROLL CALL VOTE: Witkop – yes; Elliott – yes; Snow – yes; Soutar – yes and Wunsch – yes.

MOTION PASSED UNAN

Variance Request #1 A variance of 21 feet from the required 60 feet Ordinary High Water Mark setback for a previously constructed non-conforming fire pit.

FINDINGS UNDER SECTION 3.2 – DEFINITIONS – PRACTICAL DIFFICULTY OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 3.2 definition of Practical Difficulty of the Ordinance for each of the following standards listed in that section:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome;
 - a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions; specifically the OHWM setback requirement. (Exhibits 1, 2)
 - b. The Board finds that the existing structure **does not** comply with the OHWM setback requirement. (Exhibits 2, 3, 4)
 - c. The Board finds that there is sufficient building envelope located on the subject property for this structure to be appropriately constructed. (Exhibits 3, 4)

This standard HAS NOT been met.
2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;
 - a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions; specifically the OHWM setback requirement. (Exhibits 1, 2)

- b. The Board finds that the existing structure does not comply with the OHWM setback requirement. (Exhibits 2, 3, 4)
- c. The Board finds that there is sufficient building envelope located on the subject property for this structure to be appropriately constructed. (Exhibits 3, 4)

This standard HAS NOT been met.

- 3. The plight of the owner is due to unique circumstances of the property and the problem was not self-created.
 - a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions; specifically the OHWM setback requirement. (Exhibits 1, 2)
 - b. The Board finds that according to Section 4.1.3(1) the existing accessory structures did not require a land use permit from staff at the time of construction, but shall comply with the setback requirements listed in the Ordinance. (Exhibit 2)
 - c. The Board finds that the existing structure does not comply with the OHWM setback requirement. (Exhibits 2, 3, 4)
 - d. The Board finds that there is sufficient building envelope located on the subject property for this structure to be appropriately constructed. (Exhibits 3, 4)

This standard HAS NOT been met.

MOTION: Elliott/Snow the 3 standards of Practical Difficulty have not been met.

ROLL CALL VOTE: Witkop – yes; Elliott – yes; Snow – yes; Soutar – yes and Wunsch – yes.

MOTION PASSED UNAN

FINDINGS UNDER SECTION 5.7.3 VARIANCE OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 5.7.3 of the Ordinance for each of the following standards listed in that section:

Basic Conditions: ALL of the Basic Conditions SHALL be clearly demonstrated.

- 1. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.
 - a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right

in the R-1B zoning district, provided however that the structure comply with the setback restrictions; specifically the OHWM setback requirement. (Exhibits 1, 2)

- b. The Board finds that the existing structure does not comply with the OHWM setback requirement. (Exhibits 2, 3, 4)
- c. The Board finds that there is sufficient building envelope located on the subject property for this structure to be appropriately constructed. (Exhibits 3, 4)

This standard HAS NOT been met.

2. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions; specifically the OHWM setback requirement. (Exhibits 1, 2)
- b. The Board finds that the existing structure does not comply with the OHWM setback requirement. (Exhibits 2, 3, 4)
- c. The Board finds that there is sufficient building envelope located on the subject property for this structure to be appropriately constructed. (Exhibits 3, 4)

This standard HAS NOT been met.

3. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

- a. The Board finds that generally the fire pit is unlikely to decrease the value of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b. The Board finds that

This standard HAS been met.

4. Is not where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.

- a. The Board finds that the property has a topography, shape, and proximity to the road that is unique to this property owner's parcel. (Exhibit 3)

This standard HAS been met.

5. Will relate only to the property that is under control of the applicant.

- a. The Board finds that the applicant is the appointed representative of the property owner and the variance is specific to the property owners' parcel. (Exhibit 3)

This standard HAS been met.

Special Conditions: At least one shall be clearly demonstrated.

1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.
 - a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions; specifically the OHWM setback requirement. (Exhibits 1, 2)
 - b. The Board finds that the existing structure does not comply with the OHWM setback requirement. (Exhibits 2, 3, 4)
 - c. The Board finds that there is sufficient building envelope located on the subject property for this structure to be appropriately constructed. (Exhibits 3, 4)

This standard HAS NOT been met.

2. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.
 - a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions; specifically the OHWM setback requirement. (Exhibits 1, 2)
 - b. The Board finds that the existing structure does not comply with the OHWM setback requirement. (Exhibits 2, 3, 4)
 - c. The Board finds that there is sufficient building envelope located on the subject property for this structure to be appropriately constructed. (Exhibits 3, 4)

This standard HAS NOT been met.

3. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.
 - a. The Board finds that the lot was not created prior to the effective date of the Ordinance. (Exhibit 5)

This standard HAS NOT been met.

4. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.
 - a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions; specifically the OHWM setback requirement. (Exhibits 1, 2)
 - b. The Board finds that the existing structure does not comply with the OHWM setback requirement. (Exhibits 2, 3, 4)
 - c. The Board finds that there is sufficient building envelope located on the subject property for this structure to be appropriately constructed. (Exhibits 3, 4)

This standard HAS NOT been met.

MOTION: Wunsch/Snow basic conditions 3, 4, & 5 have been met, and none of the Special Conditions have been met.

ROLL CALL VOTE: Witkop – yes; Elliott – yes; Snow – yes; Soutar – yes and Wunsch – yes.

MOTION PASSED UNAN

VARIANCE REQUEST # 1 MOTION TO DENY

MOTION: Witkop/Wunsch variance request #1 be denied.

ROLL CALL VOTE: Witkop – yes; Elliott – yes; Snow – yes; Soutar – yes and Wunsch – yes.

MOTION PASSED UNAN

The Peninsula Township Board of Appeals has **DENIED** your request for a variance of 21 feet from the required 60 feet Ordinary High Water Mark setback for a previously constructed non-conforming fire pit, incorporating the findings of fact and subject to the conditions of approval.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #1 be **DENIED**.

Variance Request #2 A variance of 22 feet from the required 60 feet Ordinary High Water Mark setback for a previously constructed non-conforming retaining wall.

FINDINGS UNDER SECTION 3.2 – DEFINITIONS – PRACTICAL DIFFICULTY OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 3.2 definition of Practical Difficulty of the Ordinance for each of the following standards listed in that section:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome;
 - a. The Board finds that conformity would be unnecessarily burdensome due to the topography and proximity to the road. (Exhibit 3)

This standard HAS been met.

MOTION: Witkop/Wunsch standard 1 of Practical Difficulty has been met.

ROLL CALL VOTE: Witkop – yes; Elliott – no; Snow – no; Soutar – yes and Wunsch – yes.

MOTION PASSED 3-2 (Elliott, Snow)

2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;
 - a. The Board finds that the property has a topography, shape, and proximity to the road that is unique to this property owner's parcel. (Exhibit 3)
 - a. The Board finds the applicant had attempted due diligence prior to the construction of the retaining wall. (Exhibit 3)
 - a. The Board finds that generally the retaining wall is unlikely to be a detriment to any neighboring properties. (Exhibits 3, 4)
 - b. The Board finds the current use of the property is a reduction of impact on the land from what would be common use of Coastal Zone Single and Two-Family Residential use (R-1B). (Exhibits 1, 2)

This standard HAS been met.

MOTION: Witkop/Wunsch standard 2 of Practical Difficulty has been met.

ROLL CALL VOTE: Witkop – yes; Elliott – no; Snow – yes; Soutar – yes and Wunsch – yes.

MOTION PASSED 4-1 (Elliott)

3. The plight of the owner is due to unique circumstances of the property and the problem was not self-created.
 - a. The Board finds that the property has a topography, shape, and proximity to the road that is unique to this property owner's parcel. (Exhibit 3)

This standard HAS been met.

MOTION: Witkop/Wunsch standard 3 of Practical Difficulty has been met.

ROLL CALL VOTE: Witkop – yes; Elliott – no; Snow – no; Soutar – yes and Wunsch – yes.

MOTION PASSED 3-2 (Elliott, Snow)

FINDINGS UNDER SECTION 5.7.3 VARIANCE OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 5.7.3 of the Ordinance for each of the following standards listed in that section:

Basic Conditions: ALL of the Basic Conditions SHALL be clearly demonstrated.

1. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.
 - a. The Board finds that the accessory structure is not contrary to the public interest. (Exhibit 2)

This standard HAS been met.

2. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.
 - a. The Board finds that that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)

This standard HAS been met.

3. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.
 - a. The Board finds that generally the retaining wall is unlikely to decrease the value of the subject property or that of any neighboring properties. (Exhibits 3, 4)

This standard HAS been met.

4. Is not where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.
 - a. The Board finds that the retaining wall follows the existing topography of the property. (Exhibit 3)
 - b. The Board finds that the property has a topography, shape, and proximity to the road that is unique to this property owner's parcel. (Exhibit 3)

This standard HAS been met.

5. Will relate only to the property that is under control of the applicant.
 - a. The Board finds that the applicant is the appointed representative of the property owner and the variance is specific to the property owners' parcel. (Exhibit 3)

This standard HAS been met.

MOTION: Witkop/Wunsch the 5 Basic Conditions have been met.

ROLL CALL VOTE: Witkop – yes; Elliott – no; Snow – no; Soutar – yes and Wunsch – yes.

MOTION PASSED 3-2 (Elliott, Snow)

Special Conditions: At least one shall be clearly demonstrated.

4. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.
 - a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)

This standard HAS been met.

MOTION: Witkop/Wunsch the 4th Special Condition has been met.

ROLL CALL VOTE: Witkop – yes; Elliott – no; Snow – no; Soutar – yes and Wunsch – yes.

MOTION PASSED 3-2 (Elliott, Snow)

VARIANCE REQUEST # 2 MOTION TO APPROVE

MOTION: Witkop/Wunsch to approve variance request #2.

ROLL CALL VOTE: Witkop – yes; Elliott – no; Snow – yes; Soutar – yes and Wunsch – yes.

MOTION PASSED 4-1 (Elliott)

The Peninsula Township Board of Appeals has **APPROVED** your request for a variance of 22 feet from the required 60 feet Ordinary High Water Mark setback for a previously constructed non-conforming retaining wall, incorporating the findings of fact and subject to the conditions of approval.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant’s variance request #2 be **APPROVED**.

TIME PERIOD FOR JUDICIAL REVIEW

Mcl 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

DATE DECISION AND ORDER ADOPTED

Date

Chairperson

Date

Vice Chairperson

Secretary

Approval of Minutes

October 8, 2015 Regular Meeting

Soutar advised there is an error on page 12. Toward to bottom it should say Land Division #212, not 121.

MOTION: Snow/Soutar to approve minutes as corrected.

MOTION PASSED

New Business

Township Board Report (Witkop) – no report

Planning Commission Report (Wunsch) – no report

Adjournment at 8:53 p.m.

Respectfully Submitted,

Mary Avery, Recording Secretary

These minutes stand to be approved at the next meeting scheduled for January 14th, 2016.

PENINSULA TOWNSHIP
Special Joint Meeting with the Township Board & the Planning Commission and the Zoning Board of Appeals
January 14, 2016

Meeting called to order at 7:00 p.m.

Roll Call

Township Board: Correia, Rosi, Witkop, Weatherholt, Hoffman and Byron

Planning Commission: Leak, Couture, Hornberger, Peters, Rosi, Serocki, Wunsch

ZBA: Vida, Cowall, Wunsch, Soutar and Elliott

Absent: Witkop (excused)

Also Present: **Peter Wendling**, Township Attorney, **Michelle Reardon**, Director of Planning and Zoning, **Claire Schoolmaster**, Planning and Zoning Coordinator and **Deb Hamilton**, Recording Secretary

Approve Agenda

Township Board

MOTION: Hoffman/Avery to approve the agenda as presented.

MOTION PASSED

Brief Citizen Comments – for items not on the Agenda

None

Conflict of Interest

Township Board- None

Planning Commission - None

ZBA - None

Business

Zoning Ordinance re-write Commencement (Introduction and Discussion)

Patrick Sloan, principle planner with McKenna and Associates and *Leslie Sickerman*, local planner working with Mr. Sloan introduced themselves. *Sloan* reviewed the project schedule. It is a proposed schedule and can be modified. *Sloan* asked the Boards and staff what issues they see with the ordinance.

Reardon said the new County Soil Erosion Ordinance has changed to be less restrictive. The Township has done work on Shoreline overlay. The Township wants to protect our natural resource. Also winery enforcement and interpretation of winery ordinances, private road standards, regulation of retaining walls, historic districts should be looked at for their land use patterns, maximum coverage of structures including overhangs and decks however ordinance does not look at impervious surfaces, and regulations enforceability and manageability.

Rosi said capital improvement program section, historic buildings - Dougherty House, Lighthouse and the Log Church; steep slopes and grading, the Township has significant park land and she would like to see something in the ordinance about parks, the need for trails, the protection of woodlands, windmills, cell towers, commercial zoning, farmers market and road side stands, and agricultural zoning.

Wunsch said he would like look at options available outside of traditional Planning and Zoning.

Vida said non-conforming roads, legal non-conforming properties, and to obtain a variance five basic conditions must be met. That language needs to tighten up.

Soutar said definitions, walls, fences and foliage screening height; patios and decks and the materials involved and what is a structure, road right-of-way as it pertains to property size, commercial zoning versus where business actually exist, master plan versus zoning districts when they differ, and ADA.

Byron said the clarity of the document itself is important, intent of the ordinance versus having to list everything specifically, short term rentals, docks and marinas (mini marinas), what is the intent of the PUD, and events (party barns).

Wendling said the zoning ordinance states that the zoning authority ends at ordinary high water mark but the property is owned to the shoreline. The zoning authority could be changed to the shoreline.

Hornberger said Bed & Breakfast

Leak said ordinance needs to be more specific.

Weatherholt asked how Boards disagreeing about changes in the ordinance will be dealt with. **Reardon** said the Planning Commission will have a special meeting at 5:30 p.m. the third Monday of every month. Those meetings could be joint meetings with the Township Board. There was discussion about the best way to communicate to the residents about this process. Information will be posted on the website and possible copies available in the office and library. **Wendling** said all communications should be given to the Clerk to give to the Township Board. When there is a difference of opinion on policy use the Master Plan as a guide.

Sloan said next month he will have diagnostic review documents which can be revised if other issues need to be added.

Citizen Comments

Curt Peterson, 1356 Buchan Dr., said he appreciates keeping the general public informed about this process.

Jim Komendera, 4168 Rocky Shore Trail, said pay attention to the contradiction between Master Plan and the Zoning Ordinance.

Board Comments

Diagnostic review will be a joint meeting on February 22, 2016 at 5:30 p.m.

Adjournment

MOTION: Byron/Weatherholt to adjourn at 8:17 p.m.

MOTION PASSED

Respectfully submitted by Deb Hamilton, Recording Secretary