

**PENINSULA TOWNSHIP
SPECIAL MEETING
ZONING BOARD OF APPEALS
MINUTES**

13235 Center Road
Traverse City, MI 49686

April 11, 2019

7:00 p.m.

Corrections Made by Clerk Becky Chown May 23, 2019

1. **Call to Order** The meeting was called to order by Soutar at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Soutar, McBride, Dolton, Wahl, Couture, Deeren (Director of Zoning), Mielnik(Director of Planning), Meihn, (Township Attorney)
4. **Approval of Agenda** Dolton moves for approval of the agenda with a second by McBride
PASSED UNAM
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None
7. **Business**

A. Request No. 873, Zoning A-1

Applicant: Northview 22, Sarah Kever, P.O. Box 3342, Traverse City, MI 49686

Owner: Langley Vineyards LLC (Bower’s Harbor Vineyards) -Linda Stegenga; Schoenherr Vineyards LLC, 13975 Seven Hills Rd., Traverse City, MI 49686; and Schoenherr Vineyards LLC, 13971 Seven Hills Rd., Traverse City, MI 49686 - Spencer Stegenga

Property Address: 2896 Bower’s Harbor Rd., Traverse City, MI 49686

1. Requesting a variance from the required 50 acre minimum for a Winery-Chateau to 45.77 acres.
2. Requesting a variance from the required 75% requirement for active production for a Winery-Chateau to 26.8% for active production for a Winery-Chateau.

Parcel Code: #28-11-121-077-10 and 28-11-128-001-12 and 28-11-128-001-11

Deeren: I received an email this morning requesting that Item 2 be removed from tonight’s variance request. This leaves the request (1) for the variance of the 50 acre minimum for us to consider tonight.

Soutar: Is this change acceptable to the board?

All members agree.

Soutar: I now invite the applicant to make their presentation.

Sarah Keever Northview 22

First, I will make some introductions. With us tonight are Linda Stegenga and Spencer Stegenga, owners of Bowers Harbor Vineyard and Kristy McClellan, Director of Operations at Bowers Harbor Vineyard, and Scott Eldridge, attorney with Miller Canfield. First, the reason for the withdrawal of the variance for the 75% requirement is that we are very close to that number. If we calculate the grapes growing on the property, maple trees, and cold air drainage on the site, this may mean we are in compliance. We will be submitting a survey and our calculations in the future and believe we may not need a variance. I would like to thank all the people who have showed up tonight in support of Bowers Harbor Vineyard. It is not a surprise that so many people are in support of Bowers Harbor Vineyard. They have been here since 1992. They support the Old Mission Lighthouse, Old Mission School, and the library. That support runs both ways and we appreciate everyone's support. We want to explain why we are here tonight. Part of the ordinance to have the designation as a chateau is the property must be 50 acres. We have 45.77 acres and we are short of the 50 acre requirement. I am going to jump around here. One of the questions in the ordinance is "was this condition self-created?" We really feel this is not a condition created by us, but by the township. In 1992 Bowers Harbor Vineyard was approved through a special use permit (SUP) as a roadside stand. Immediately following that in the same meeting, the action of tasting and selling wine from a roadside stand was deemed prohibited. This action made them legal and non-conforming from the beginning. The township had issued the Bowers Harbor Vineyard the SUP and yet limited their ability to grow from day one. Right there the door was closed. Soon after this the winery-chateau designation was created. But at that time it was not created so that Bowers Harbor Vineyard could fit into it. In 1996, they went to the township and asked how could they fit into this designation of a winery-chateau? It was denied by staff and I don't know why and do not have further information. Over the years different amendments were added and some were denied. Some of those amendments continued to make Bowers Harbor Vineyard non-compliant. These changes benefited other wineries in the area and seemed to push Bowers Harbor Vineyard out even more. This has been going on for three decades. It is necessary to point this out. This has no reflection on the current staff or board members. This history helps to confirm that this was not created and we feel strongly about that. In 1992 they were granted an SUP as a road side stand because there was not any other item for them to fit into at the time. Almost immediately an ordinance was passed prohibiting from tasting and selling wine from a roadside stand. In 1996 they did apply to become a winery-chateau and were denied. There have been numerous attempts for the winery-chateau designation without success. In 2010 under a SUP, they were allowed to expand their tasting room, have outdoor seating, have 20 events per year and expand their hours. In 2015, they returned to request year round operation. In 2015 Bowers Harbor Vineyard was encouraged to apply under Section 125 at the suggestion of the staff at the time. Both of those issues were tabled and never acted upon. In 2016 they came before the

planning commission and the issue did not move forward. In December 2018 Bowers Harbor Vineyard applied for a second amendment under the revised SUP 125. This was tabled. We are now attempting to obtain the variances needed to obtain the designation as a winery-chateau. We are here tonight to find out how we can comply and meet with all the commissions. We are 45.77 acres comprised of three parcels. They would love to buy more but the land on the west is owned by the township. The area to the south is owned by private individuals and has been identified as not suitable for growing. The north side is bordered by Bowers Harbor Road and Seven Hills Road to the east. Even how Bowers Harbor Road was built on an angle prevents Bowers Harbor Vineyard from purchasing additional acreage. For us to apply to become a winery-chateau vineyard, we are asking for a variance for the 50 acre requirement. At this time I will open it up for questions.

Soutar: Do any of the board members have any questions for the applicant?

Dolton: Was the original acreage in 1992 at 45.77 acres?

Stegenga: We had 9 acres in 1992 and in 1994 we acquired the rest of it.

Soutar: Asked for a show of hands from audience members in attendance as to who were in favor of the request. (Majority of people in the audience raised their hands.) We received about 60 letters and only three were negative. I am requesting due to such a large audience that speakers not repeat themselves and limit their comments to three minutes. McBride acted as time keeper.

Soutar: I will now open this up for the public portion of the meeting. Who would like to speak in favor of the application?

Doug Kosch 14620 Peninsula Drive

I am the owner of the Boathouse Restaurant located at 14039 Peninsula Drive. I have done business with Linda, Spencer, and Kristy for over 16 years. We have done hundreds of events serving thousands of guests. All of those events have gone off successfully without any issues to law enforcement or complaints from neighbors. In doing business with them, they are stewards of the area, have always upheld and done things in the best way possible. It has been a pleasure working with them and I hope to continue to do so. As a resident I have enjoyed driving kids to school and driving by the property. The property is always clean. The tasting room is always in immaculate shape. I think it would be foolish for us not to pass this and help them continue to thrive. They are part of what makes this area so popular. Thank you.

Shawn O'Keefe 448 Washington

Wine maker at Mari Vineyard and part owner of Chateau Grand Traverse

I worked on the planning commission for two terms and when people say that things get tabled and do not get done, this was the case. The whole five years I was on the commission I understood that in an emerging industry in the beginning there was a lot of division. There was much concern over the increased traffic to the peninsula and I hope that people have realized over time that if we want more than just houses out here, then we are going to need a thriving agricultural businesses. All the vineyards have spent a lot of time

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getting people to come to their place and have a bonding experience and Bowers Harbor Vineyard existed before the ordinance was created and the ordinance has changed over the years. I urge the township to find a way to make this work. Bowers Harbor Vineyard was the first to establish a higher price point for their wines. I used to laugh when people started charging \$35-70 for a bottle of wine. I don't any more. I urge you, I was on this board and we never could figure out how to come to a conclusion on this matter. Bowers Harbor is a crucial part of what we are trying to do in this region and I applaud their efforts. Thank you.

Michael Frederick 14877 Shipman

I am strictly a consumer and moved up to the peninsula in 2012. One of the joys we get is visiting wineries when people visit. Bowers Harbor is one we really enjoy going to. The way they keep their land and run their business is really professional. For a small business that has an opportunity to grow I think it is crazy for government to limit that growth. They are great people and I know them personally. They will be great stewards and I hope you approve their request. Thank you.

Donna Hornberger 6730 Mission Ridge

I am on the planning commission. I was on the committee that was formed to work with Bowers Harbor Vineyard and over the period of time we worked together, we decided that this was the best way for them going forward. If you have any questions regarding any of our meetings, I am here to answer them. Thank you.

Soutar: Is there anyone else who would like to speak in favor of this application? Seeing no one, I will ask if there is anyone who would to speak against the request.

Marie Dalese 527 2nd Street Traverse City

I am part owner and CEO of Chateau Chantal Winery. I wish that when there was a show of hands it was not just individuals voting for or against but included those in a gray area. I am not here just to speak against Bowers Harbor. I am here to speak my mind about how the resolutions are coming about. I am here to find recourse for working with the township, which has been decades. I fully support finding a solution for Bowers Harbor and how they can fit within our ordinance. When I learned that the township had been the driving force around the current proposed solution, I was concerned. This matter is very complex and I cannot expect everyone and sometimes not even members of our township to understand how the winery ordinance is currently written. It is detailed and cumbersome and with some other variances that were discussed here tonight. My concern to date continues to be a precedent setting to the winery-chateau ordinance users. Our concern is that there is a fair playing field regarding manufacturing processes and how that is going to play out. The planning commission has a meeting scheduled on Monday, April 15, 2019 and on the agenda is a winery-chateau discussion. I will be in attendance and am ready and willing to help with this issue. Thank you.

Harold David Edmondson 12414 Center Road

I am a fourth generation fruit farmer on the peninsula. My great grandfather first bought 40 acres from Barry Hammond. And then we got another 40 acres. Then we were up to 140 acres because we grew. We knew one of our options to grow was to purchase more land. And when I took over the farm, I took advantage to buy acreage when possible. That is what I would suggest needs to be done with this situation here. They are not land locked. They have all kinds of options and there are all sorts of property for sale. It is like what many old time farmers have told me that being in the agriculture business is like being in a poker game and you have to ante up and that is all that is going on here. They want to have the chateau privilege and the minimum is 50 acres and 75%. That is what all of the other chateaus have abided by and it would be totally unfair to allow someone who doesn't meet the deal when there are options all over the place. So they need to step up to the plate and stop operating under the wire like they have been doing forever. We have to all be treated the same. Thank you.

Brent Mistel 13859 Center Road

Basically, this issue is about compliance. In this original application they want to get down to planting 12% of grapes. If you want to be a chateau, then you have to have 50 acres. I have lived out here for 50 years and with the PDR program we wanted to control the traffic and all of the building. I live on Center Road and none of this has prevented traffic on Center Road for four months out of the year. They are primarily doing one thing- tasting, drinking, and buying alcohol. I for one am not in favor of having another chateau in this area. If you meet the requirements, no one is trying to stop anybody. When you start to make special rules, then I am not in favor of this. Thank you.

Soutar: Is there anyone else who would like to speak against the application? Being none, I will turn it back to the board.

Soutar: I would like to give a little preamble and Mielnik and Meihn may give one if they so choose. My preamble begins with asking what the nature of a chateau is. A chateau designation allows the winery to bring in grapes from other locations and removes the 85% rule that the grapes must be grown on the Old Mission Peninsula. That requirement would then go away. This designation also allows for a B&B. This takes land out of growing production for other things. It is also our job to protect those who comply with the laws of the chateau designation. Why does Bowers Harbor need this designation? In the staff report there are a number of reasons that become very pertinent and are the most important points. Special Use Permit Number 32.1 was approved by the Peninsula Township Board in April, 1992 designating Bowers Harbor as a roadside stand. The selling of wine was rescinded about a half an hour later in that same meeting. There was no restriction on the acreage for the winery or in this case for the roadside stand. They could have as many or as few acres in production as they wanted. In our site visit we realized there was some cold air drainage land that cannot produce. There are also some areas that as a geographer by training I know are not arable. This is like ~~an interior drain~~ interior drainage where all the water goes in and it is unable to flow out and with the high water table we have here that

makes it very difficult to grow grapes. That is what this particular study called the Tart Cherry Area showed. It will not grow cherries; it will not grow grapes or grow anything of a regular nature. These are some of the areas we are looking at. They are bounded on two sides by roads. According to our ordinances anything beyond those roads is not applicable to the 50 acre requirement. So it is very difficult to go in those directions. The west is owned by the township and the south is privately owned and not arable as well. They really do not have any other places to go at this time. Other provisions that could be made are up to the planning commission and not to us.

Mielnik: This has been a product of many conversations and we did create a committee. We considered many options and this is what led us to consider the variances. Originally we considered two and now it looks like one might be the only one required. I think the challenge here is for the ZBA to focus just on the variance issue. The other issues about how a winery-chateau may operate in the future and the SUP permitting process is under the planning commission's purview and the town board as well.

Meihn: I am about enforcing regulations and ordinances and that is what makes good government work, provides something the citizens can rely on, and that is what makes good judgements across the board. The problem that one is confronted with in this situation is it is complex. This was not an initiative by the township. This was an initiative that was determined by a process with Bowers Harbor who has already tried to be compliant and had made a request nine years ago. This was before the ordinance. You are stuck in a very difficult position. There is the law of equity to make the right decision not for today, but for tomorrow and the future. That is what a variance is and it allows you to look at a situation from a different perspective. I would ask you to be mindful of that. You have to be careful on the decision and how that might affect others. It has been my hope that there should be a review. Finally, it is my recommendation to have a review of the winery ordinances across the board and parity in the events and activities shall be not one where it is not what one can hide, but everyone has the right to be successful. You want all of these wineries to be treated the same and for them to be creative in their processes.

Soutar: The issue ~~is~~ is now turned back over to the board.

Dolton: From what has been written, it appears that the land must be contiguous.

Meihn: Yes, you are correct. There are many articles and conjunctions in the ordinance wording that needs to be clarified. This is why by December, 2019 we are going to have taken a good look at these issues

Mielnik: There are a number of things going on. The township just amended the farm processing ordinance and this issue of contiguous land holdings came up and that was addressed. The need to look at the ordinances, master plan, and to have a citizen survey on this issue is all occurring. It is not uncommon that ordinances need to keep up with the industries.

McBride: I definitely want to keep the focus on what is before us and not go anywhere else. Perhaps Mielnik could help explain why we are just looking at this one small piece of the issue.

Mielnik: Essentially the winery-chateau ordinance allows for this to be established with a

SUP. The process for this is that an application be made, this goes to the planning commission, there is a public hearing, there is a lot of criteria and with an affirmation from the planning commission, this goes to the town board. We are at a point where the applicant is not allowed to apply for that SUP because they are lacking the acreage to make this possible.

McBride: This is not giving them approval to be a winery-chateau. This is just one step in the process for them. I just wanted to state that for clarity. I would be in favor and we can get into the details later.

Wahl: Going over this I saw three potential issues- the 50 acres, the 75% requirement, and the process in the winery. The easiest to deal with is the 50 acre issue. I do not want to have to set the precedent for other wineries to come in and not meet the 50 acres. Bowers Harbor Vineyard is one of a kind in that they started in 1992. In 1994 they bought up all the land they could. In 1996 the chateau ordinance was created. They were already maxed out on land at that point. The key for me is that prior to this ordinance being passed, they were already land locked.

Couture: There is a reason we have this procedure. Can someone tell me why the 50 acres; was this an arbitrary number?

Meihn: This was based on history and reading. Commercial wineries wanted to distinguish themselves from people making wine more as a hobby. Many of the wineries in other states in the 1990s and 2000s were fighting over what was the appropriate number of acres. Then a law came out December 31, 2018 that stated how many gallons of wine could be produced and now that law is gone. We make decision when we are 12 that we may regret at 50.

Soutar: Mr. Edmundson is stating from the back of the room that he can help us with the 50 acre question. Please come up and share your knowledge with us.

Harold David Edmondson 12414 Center Road

I attended many of those meetings from the past when I was much younger. The public was concerned about having wineries everywhere on the peninsula and that is where the 50 acre minimum came from. That was the deal arrived at between the citizens and the board. It was a compromise and that is what we wanted at that time. There is an amendment process and if we want to change it, we should go through the amendment process.

Soutar: The Board will now go through the 6 Basic Conditions that must be met. This will require a voice vote.

Section 5.7.3 (1) BASIC CONDITIONS: The applicant must meet ALL of the following Basic Conditions.

a. That any variance from this Ordinance: a) That the need for the variance is due to unique circumstances or physical conditions, such as narrowness, shallowness, shape, water or topography, of the property involved and that the practical difficulty is not due to the applicant's personal or economic hardship.

Wahl: I think it has been well documented due to the limitations on all sides of the winery to purchase

additional land.

McBride: The way the road cuts diagonally would be considered a unique circumstance.

Couture, McBride, Soutar, Dolton, Wahl **all agree** the condition has been met.

b. The need for the variance is not the result of actions of the property owner (self-created) or previous property owners.

Wahl: I would say yes because they bought all the land they could prior to the ordinance.

Couture, McBride, Soutar, Dolton, Wahl **all agree** the condition has been met.

c. That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)

Couture, McBride, Soutar, Dolton, Wahl **all agree** the condition has been met.

d. That the variance will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

Couture, McBride, Soutar, Dolton, Wahl **all agree** the condition has been met.

e. That the variance will not cause adverse impacts on surrounding property, property values or the use and enjoyment of property in the neighborhood.

Wahl: I do understand that any growth of wineries will potentially increase the traffic.

Couture, McBride, Soutar, Dolton, Wahl **all agree** the condition has been met.

f. That the variance shall not permit the establishment within a district of any use which is not permitted by right, or any use for which a conditional use or temporary use permit is required.

Couture, McBride, Soutar, Dolton, Wahl **all agree** the condition has been met.

Soutar: All 6 conditions must be met for us to proceed. Is there a motion to be made?

Action-Motion McBride makes a motion that Request No. 873, Zoning A-1 be approved with all conditions having been met and without any conditions. Dolton seconds.

Ayes: Couture, McBride, Soutar, Dolton, Wahl

Nayes: None

PASSED UNAM

8. Approval of Minutes from February 14, 2019

Action-Motion Soutar moves that the minutes from February 14, 2019 be approved.
Couture seconds.

PASSED UNAM

9. Citizen Comments

Monnie Peters 1425 Neahtawanta Road

I was at home listening to the meeting when the sound went out at 7:45 p.m. I drove over to hear what was being said. I am hoping that Stream Spot will have picked this up. We need to get this situation fixed.

10. Board Comments Wahl: There is a joint meeting of the township board and the planning commission on April 15, 2019 at 7:00 p.m.

11. Adjournment Wahl moved for adjournment with a second by Couture at 8:25 p.m.