

**PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
SPECIAL MEETING
April 20, 2017**

1. **Meeting Called to Order:** Chair Vida called the meeting to Order at 7:00 p.m. at the Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686

2. **Pledge of Allegiance**

3. **Roll Call of Attendance:**

Present: Bernie Soutar, Matt Cowell, Laura Serocki, Rachel McBride (alternate), Rick Vida

Absent: Warren Wahl

Also Present: Christina Deeren

Chair Vida, welcomed Christina Deeren as the new Zoning Administrator for Peninsula Township and also welcomed back Laura Serocki. Chair Vida also noted Rachel McBride as an alternate.

4. **Selection of Officers:** There is not a full quorum of normal ZBA members Chair Vida requested to postpone the selection of Officers. Chair Vida, requested that this be deleted from the Agenda.

Soutar: Questioned if this should be done as the Chair and Vice Chair were present.

Vida: It is my understanding that we need a full contingent board of regular members. That is what he was told in the past therefore that is what he is going with.

Requested Zoning Officer look into the correct procedure as to the selection of Officers and report back to the Board.

Cowell: Questioned why this was on the Agenda at this time as the selection of officers is to be made in September.

Vida: We have not had a full Board of regular members since September, 2016, and therefore have been unable to conduct this agenda item.

Cowell: thought this was already accomplished for this year.

Vida: It has not been done.

5. **Approval of the Agenda:** Approval of the modified Agenda: Motion by Cowell / 2nd by Soutar. All in favor: all I's. Motion pass

6. **Conflict of Interest:** None.

7. **Public Comments:** Soutar noted that a letter of correspondence had been received by the Zoning Administrator in support of case no. 858 Ward, Richard and Lynn. Soutar requested that Christina Deeren present the letter before the Board. Letter was received dated April 17, 2017, from the Shore Wood Association Board.

8. Scheduled Public Hearing:

Request No. 858, Zoning R-1B

Applicant: Richard and Lynn Ward, 5495 Arbor Bay Court, Brighton, MI 48116

Owner: Richard and Lynn Ward, 5495 Arbor Bay Court, Brighton, MI 48116

Property Address: 2783 Shore Wood Dr., Traverse City, MI 49686

Soutor noted that there was an error on the Agenda listing this case as: Case No. 848 which would not be in sequence to the cases and that this should be corrected to Case No. 858.

Motion to modify agenda from case no. 848 to 858. Motion by Cowell and 2nd by Soutor. Motion passes.

The applicant is requesting a variance to eliminate the requirement under Section 7.10.11 of the zoning ordinance that approximately on half mile of Shore Wood Drive be improved in terms of grade, roadbed, shoulder, and paving requirements. The variance requested is for the construction of a single family residence. Chair Vida invited applicant up to make their presentation. Rick Ward addressed the ZBA and stated that we are requesting a variance to that road ordinance we would like to build our permanent residence on Lot No. 9 of Shore Wood Association. There are presently about 25 other residences with homes on that street. The original association area was platted in the 40's obviously well before the ordinance was developed since that time there have been other homes that have been developed that have either been grandfathered in or have received waivers two of which are being built currently. So we are requesting that we receive the same waiver so that we may build our residence as well.

Dustin Ordway 3055 Shore Wood Drive, Traverse City, MI 49686, I live here as a permanent resident and have resided here for the past several years. I have been a part-time resident of Shore Wood Drive for over 50 years my parents having bought the property in 1961. The parcel that the Wards own had a house on it at that time. A nice little block house with knotty pine interior. Mr. Carminson had it before 1961 there was a house there and the driveway was his. The road was there then and since has been no change. I wholly support the application I hope you will grant their application. There is no reason they shouldn't be able to build and no reason to show that they have to change. So that is the first point that I would like to make given my personal experience and the application and the facts as Mr. Ward had said that are many other homes that have been built there over the years there is certainly no reason to require a change and not to grant a variance if one is needed. The second point that I would like to make is the same point that I had made before when the Krzeczowski's and Palmer's at about Lot 20 made an application in the past year and the Township withdrew their request that there had to be a variance and refunded their fee and said go ahead you don't need a variance. The fact is as I have said that Shore Wood has been there for over 50 years. It was there before the ordinance was in-acted and it is not subject to the ordinance in terms of road conditions, construction or size. Whenever someone wants to build there they are put through this process. Except in the Palmer / Krzeczowski's situation a few months ago they were actually notified that you don't need to proceed you can stop and we will refund your fee. It would be great if the Township would whether by ordinance or otherwise modify your records and in some way reflect that Shore Wood and perhaps other roads and I suspect that there are only a few in the Township are grandfathered and this requirement simply doesn't apply. So people like the Wards do not have to make a special trip here and expend additional funds and to have people have to work for them to try to get approval that they really shouldn't have to even seek. I know that it might be complicated. I don't know if you need a new ordinance or a variation of the ordinance or simply a note in the file but with respect that would be a great change if we could avoid having to go

through this again. From the prospective as a resident of Shore Wood, and there are a couple others here as well whenever this comes up the implication is if someone like the Ward's didn't want to get the variance they may turn back to us and say that maybe you live here because you like the narrow winding road through the woods but we want you to change it. We don't want to change it and we shouldn't have to change it as it is grandfathered so it creates a little bit of nervousness on everybody's part to have to go through this process. So we would very much appreciate it if you would somehow make note so that it doesn't have to happen again.

Chair Vida: Your point is very well taken. This issue has come up before this Board several times over the past two or three years. I know that the Planning Commission is in the process of trying to upgrade and revise the existing Zoning laws. Unfortunately for the ZBA we have to act with what is currently on the board or on the record as far as existing zoning laws. Our hands are somewhat tied.

Dustin Ordway: Again I am not telling you how to do this. Maybe it is not up to you or any of you to be able to any of it. I suspect that if some official at the Township were to communicate with the Township's Attorney that they could help like what had happened in the Palmer /Krzeczkowski's situation to find a solution so there wouldn't be the burden on this committee to be able to deal with this. There wouldn't be the situation like this current one. There has got to be a simple solution.

Chair Vida: It may be worth wild to contact our attorney to find out if there is some sort of modification that can currently be made so we will try to do that.

Dustin Ordway: Great. Thank you very much. In the meantime certainly don't hold up the Wards.

Bernie Kroupa 3183 Shore Wood Dr., Traverse City, MI 49686. Part of the Shore Wood Association, Treasurer for the Association for the past 20 years only because I was late for an annual meeting 20 years ago. I just want to address positive things we do there for safety and for several years we have had a regular schedule with the Fire Chief coming through and suggesting things we pretty much got the idea so almost every year we have Brothers coming through and if there is a hanging limb or something a little bit dangerous or a questionable limb we will have removed. We have R.W. Popp excavating do it the real way and in between I do it when it's not raining too hard and so we keep it wide open. We ourselves had a personal experience with the EMT last year in December. When we had a not false carbon monoxide alarm and then the Calvary came certainly nothing slowed them up from getting down there and of course we have daily delivers FedEx, UPS ext. all that sort of thing. I as Laura did struggled for nine years on the Planning Commission struggled with access management and that was a very difficult thing. Move and didn't move particular when it came to roads so low on the higher archery as this one which we are still trying to wrestle with. How do we protect M-37 is the top of the higher archery and we did that in part with the heritage designation. So we think we have a sound road it's one of the old ones. It's what my dad use to refer to as the predassessor use to think of in the 40's and 50's when they laid that one out they probably didn't have too many inspections at that point in time. But it moves and it works well. Its home and we look forward to a new start.

Dave Burkey: 2671 Shore Wood Dr., Traverse City, MI 49686. I was here last fall on the same issue with the lot next to them that is currently being constructed and we submitted a letter that I would like you guys to review and take a look at 7.10.11 and try to accomplish some kind of revision on that ordinance. We would really appreciate it and we certainly support their submission on some sort of a variance.

Chair Vida: Anyone else wishing to speak on the part of the applicant? So noted there are none. Anyone wishing to speak in objection of the applicant's request? So noted there are none. We will close the public meeting and bring it back to the board for discussion.

Bernie Soutor: Mr. Chairman I would like to respond to a couple of things that were said. The first gentlemen mentioned Mr. Krzczkowski's building and actually it is not a building. It was a case no. 855

which came before us on September 8, 2016, it is not directly germane as this was a request for a land division which is of course different from what we are looking at for a building of a home. That is why we were able to rescind the fee on it because there is no need to look at the road for a lot division. We did have subsequent to that 855 case that came before us in September case no. 856 which directly asked us for the same variance on the 7.10.11 there is no difference on it. It is directly next door or very close to being next door and it is the exact procedure on it that we will follow tonight. I just wanted to make those points which are indeed valid points but Mr. Kreczkowski was actually here for a land division and not for building a new home.

Chair Vida: any comments or discussion amongst the board as to what has been presented?

Matt Cowall: I appreciate what the neighbors are saying and it is a little bizarre to repeatedly come through here for the same stretch of old road. I would hope that we can get some sort of relief on this however, I also appreciate where the ordinance is coming from on this so when you have really old dated infrastructure like this the purpose of the ordinance is to gradually work towards updating that infrastructure eliminating problems that come with the old infrastructure proving that and bringing it up to a standard that is more into particularly emergency response services look for in order to be able to service your residences should they ever need to there is really good strong logic behind an ordinance being set up to try engender these types of improvements and aged infrastructure the particular treadmill that Shore Wood is on right now I would certainly concur has gotten to the point where an alternative if one could be developed by the Township would make some sense. That is not to say that Shore Wood is never going to be improved and that is not to say that the ordinance re-write that is being done right now isn't going to present new or different, fewer or more challenges to residents that are on old roads like that. It's not the only one in the Township certainly the ordinance we have to work with right now doesn't really do a tremendous job at satisfying folks like you that are on a road like that. Hopefully we are working our way towards better things in the re-write of the ordinance. This is one of the things that has boggled up before this board all the time where the cure seems to be on the extreme end of a lot of these circumstances. My apologies I feel your pain for sort of being on the merry-go-round with Shore Wood, but there are bigger considerations and actually really important good logical reasons behind an attempt to incorporate into the zoning infrastructure a way to make these improvements that are fair to the residents that need these improvements that result in something better down the line.

Chair Vida: There were seven points in the staff report that identify general findings of fact as well as six basic conditions. Are there any changes from the Board regarding these general findings of fact or basic conditions?

Bernie Soutor: I will move to approve all these findings of fact 1-6 for case no. 858 as pertaining to this case no. 858

Support: Matt vote: all I's

Chair Vida: As to the six basic conditions relating to this applicants request any conditions or changes or is this acceptable as a motion to approve.

Matt: given the history of Shorewood I can make a case for all 6 of these basic conditions.

Chair Vida: Is that your motion?

Matt: My motion would be request that 858 be approved based on the fact that all basic conditions have been demonstrated.

1. 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.
2. The need for the variance is not the result of actions of the property owner (self-created) or previous property owners.
3. 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).
4. That the variance will do substantial justice to the applicant as well as tot other property owners in the district, or whether 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.
5. That the variance will not cause adverse impacts on the surrounding property, property values or the use and enjoyment of property in the neighborhood.
6. 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.

Bernie: Before I second motion that Mr. Chairman can I bring to your attention that we in previously of considering these that we have reasons why each standard has been met or not been met and those reasons are not here. Therefore is there a protocol that we should actually add those standards on each of these six.

Chair Vida: Point well taken

Bernie: If Matt were to accept it I would propose reasons why each standard should be met.

Matt: Feel free

Bernie: Basic conditions under one:

FINDINGS UNDER SECTION 5.7.3 VARIANCES OF THE ZONING ORDINANCE

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

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

1. 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.

The following findings may support this standard HAS 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(2)(a) a single family residence is a use by right in the R-1B zoning district. (Exhibit 1, 2)
- b. The Board finds that Shore Wood Drive was established prior to the effective date of Section 7.10 Road Standards of Zoning Ordinance. (Exhibit 2)
- c. The Board finds that the proposed structure is a single family residence which complies with the uses allowed in the R-1B zoning district. The Board further finds that the proposed structure complies with all applicable zoning standards. (Exhibit 2, 3, 4)
- d. The Board finds that according to Section 4.1.3 a Land Use Permit is required to construct a structure of greater than twenty-five square feet. The Board further finds that according to Section 7.10.11 existing non-conforming frontage roads must meet the grade, roadbed, shoulder, and paving requirements prior to the issuance of a Land Use Permit (Exhibit 2)
- e. The Board finds that Shore Wood is an existing legal non-conforming frontage road. The Board finds that given the property fronts Shore Wood Drive the ability to construct any structure is prohibited unless the frontage road is brought to up to Peninsula Township Zoning Ordinance standards or a variance is granted. As such the Board finds that the requested variance is necessary for the owner to use the property for a permitted purpose. (Exhibit 2).

The following findings may support this standard and HAS been met

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

The following findings may support this standard HAS been met.

- a. The Board finds that Shore Wood Drive was established prior to the effective date of Section 7.10 Road Standards of the Zoning Ordinance. (Exhibits 2, 5)
- b. The Board finds that Shore Wood Drive is an existing non-conforming frontage road. The Board finds that given the Property which fronts Shore Wood Drive the ability to construct any structure is prohibited unless the frontage road is brought to standards or a variance is granted. (Exhibits 2, 3, 4, 5)

The following findings may support this standard HAS been met.

3. That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirements 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).

The following findings may support this standard HAS been met:

- a. The Board finds that the property is zoned Coastal Zone Single and Two Family (R-1B) and according to Section 6.2.2(2) a single family residence is a use by right in that zoning district. (Exhibits 2, 5).
- b. The Board finds that the construction of the proposed structure will result in residential use (Exhibits 3, 4).

The following standard HAS been met:

4. 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.

The following findings may support this standard and HAS 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.(2)(a) a single family residence is a use by right in the R-1B zoning district.
- b. The Board finds that Shore Wood Drive was established prior to the effective date of Section 7.10 Road Standards of the Zoning Ordinance (Exhibit 2).
- c. The Board finds that the proposed structure is a single family residence which is complies with the uses allowed in the R-1B zoning district. The Board further finds that according to Section 7.10.11 existing non-conforming frontage roads must meet the grade, roadbed, shoulder, and paving requirements prior to the issuance of a Land Use Permit. (Exhibit 2).
- d. The Board finds that according to Section 4.1.3 a Land Use Permit is required to construct a structure of greater than twenty-five square feet. The Board further finds that according to Section 7.10.11 existing non-conforming frontage roads must meet the grade, roadbed, shoulder, and paving requirements prior to the issuance of a Land Use Permit (Exhibit 2).

- e. The Board finds that Shore Wood Drive is an existing legal non-conforming frontage road. The Board finds that given the property fronts Shore Wood Drive the ability to construct any structure is prohibited unless the frontage road is brought to Peninsula Township standards or a variance is granted. As such the Board finds that the requested variance is necessary for the owner to use the property for a permitted purpose. (Exhibit 2, 5).

The following standard HAS been met:

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

The following findings may support this standard and HAS been met.

- a. The Board finds that the construction of a single family residence is an improvement which will likely increase the value of the subject property. The Board further finds that generally the construction of a single family residence is unlikely to decrease the values of any neighboring properties. (Exhibit 2, 3).

The following standard HAS been met:

- 6. 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.

The following findings may support this standard and HAS been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two Family (R-1B) and according to Section 6.2.2(2) a single family residence is a use by right in that zoning district (Exhibit 2).
- b. The Board finds that the construction of the proposed structure will result in residential use (Exhibit 3, 4).

VARIANCE REQUEST #858 MOTION TO APPROVE / DENY:

The Peninsula Zoning Board of Appeals has **Approved / Denied** your request for a variance to eliminate the requirement under Section 7.10.11 of the Zoning Ordinance that requires approximately one-half mile of Shore Wood Drive to be improved in terms of grade, roadbed, shoulder and paving requirements. The variance requested is for the construction of a single family residence.

DECISION:

Upon motion by: Matt Cowell

Seconded by: Laura Serocki

And passed the Board ruled that the Applicant's variance for Case No. 858 be **APPROVED / DENIED**.

MCL 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal the 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 Zoning Board of Appeals, 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 OF DECISION AND ADOPTED ORDER

Date

Chairperson

Date

Vice Chairperson

Date

Secretary

Approval of Minutes: Laura stated that she was not at the meeting held on November 10, 2016.

Matt Cowell Motion to approve / 2nd by Bernie Soutar – Motion passed.

New Business / Old Business: Did not appoint new members in August or September 2016 will still need to address this issue at next Board meeting with regular Board members.

Motion to Adjourn: Laura made the motion to adjourn at 7:40 p.m. / 2nd by Matt