

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

13235 Center Road
Traverse City, MI 49686
August 9, 2018
7:00 p.m.

1. **Call to Order** The meeting was called to order by Soutar at 7:00 PM
2. **Pledge**
3. **Roll Call of Attendance** Soutar, Serocki, Hayward, Wahl, McBride, Cowall (Vida and Deeren excused)
4. **Approval of Agenda** Cowall makes a motion that the approval of the minutes (7) be moved to come after 10. Citizen Comments. Serocki second. **Passed Unam**
5. **Conflict of Interest** -None
6. **Brief Citizen Comments – for items not on the Agenda** None
7. **Approval of Minutes from June 14, 2018 Meeting** Moved
8. **New Business**

A. Request No. 866, Zoning R-1C

Applicant: Michael T. and Whitney D. Goulas, 9898 Center Rd., Traverse City, MI 49686

Owner: Michael T. and Whitney D. Goulas, 9898 Center Rd., Traverse City, MI 49686

Property Address: 9898 Center Rd., Traverse City, MI 49686

1. Requesting a variance of fourteen feet from the required fifteen foot south side yard setback to place a wall one foot from the property line.
2. Requesting a variance of twenty-four feet from the required twenty-five foot front yard setback to place a wall one foot from the right-of-way of Center Rd.
3. Requesting a variance for a pre-existing legal non-conforming covered porch to be enclosed. The requirements for additions to non-conforming structures are defined in Section 7.5.5. This is a legal non-conforming parcel of record.
Parcel Code: #28-11-017-004-00

Request No. 866 has been postponed twice.

Motion by Cowall to place Request No. 866 back on the table with a second by Serocki.

Passed Unam

Soutar: Is there anything that staff would like to add?

Hayward: A Certificate of Survey of the Goulas' property and a letter of Variance Explanation of what they were supposed to do have been placed before you for the record.

Soutar: I now turn the floor over to the applicant to present their request.

Chad Smith 5784 Benton Rd. Williamsburg, Michigan

I am the builder for the Goulas. There is a permit for the enclosed porch. Under my understanding of your zoning regulations, this falls under the category of alteration rather than an addition. There is an existing patio and an existing deck above and we installed a drain system on the existing deck. The room is not insulated. It would not be considered habitable living space.

Serocki: Was the permit from the Peninsula?

Smith: The building permit was issued by Grand Traverse County. I came to give a check to Deeren, the Director of Zoning and she would not issue me a building permit. It had been my understanding all along that we would be given a permit.

Serocki: So you have a permit from the county and not from the township?

Smith: Yes

Whitney Goulas 9898 Center Rd

I am the one who wrote the document. We knew we needed to do something with the patio for safety purposes due to the steep slope. We have a 9 month old baby and for safety we decided to enclose it. The intent is to have it as a 3 season patio. There is no insulation and we did not change the use of the room and just put the screens and windows there.

Cowall: When was the property purchased?

Goulas: June, 2017

Cowall: When did you know that you had not done the business with the township that needed to be conducted?

Goulas – We did not know that we had done anything wrong. There was a chain link fence that was originally there and the new fence was in the same place and height.

Hayward: The record shows that there was a chain link fence on the north and south side of the property.

McBride: So just to be clear, the fence is in the same spot?

Goulas: Yes, the exact same spot.

Hayward: They are adding additional fencing.

Goulas: What we have currently was just replaced. We did not put up anything additional without permission. Where the parking is currently we want to put a gate because we do not have a garage or a car port and again because we have a dog and a baby, I just wanted to have that extra barrier so there is less exposure to Center Rd.

McBride: So the gate will enclose the cars?

Goulas: Yes, we can pull two cars in there almost like a garage space and we can put something overhead to protect the cars.

Cowall: Was the proximity of the house being so close to the road taken into consideration when you shopped for it?

Goulas: Yes. That being said, I did not know there would be so many issues in trying to create safety for my family. I am just asking to put up a fence and not a huge barrier. If I would have known that putting up a fence would have caused this much of an issue, I would have considered something else.

Cowall: Did the realtor talk to you about any of these issues or give you any advice about potential zoning issues that may arise in the future?

Goulas: Yes, I knew that it was legal, non-conforming property. I just did not know that trying to provide safety would be such an issue with township.

Wahl: Did any of the fencing replaced impede on the other neighbors' properties?

Goulas: No.

Soutar: Did you try to gain a permit from zoning for the fencing that is not grandfathered in?

Goulas: We discussed the fence multiple times with Deeren and are trying to get the required permits.

Cowall: The bumpers along Center Road on the west side of the house are similar to pilings and they are not contiguous fencing?

Goulas: No. The nursery is right there and the posts would offer protection if anything were to veer off the road. These are going to be hidden by landscaping.

Soutar: Could you clarify that there are two separate things in front of the house; one is either steel or aluminum posts and the other is the curve curb cut bumper and the fence is within the limits of the curve cut bumper, but not the posts. Am I reading this correctly?

Goulas: No, they would be set-back even further closer to the home. So where the posts are now is where the gate is coming out and the bumpers would be closer to the house.

Serocki: On a non-conforming property (question to Hayward) it is not going to make it more non-conforming, can't you replace the fence with an open fence?

Hayward: Yes, you can repair or replace the fence, but you cannot add additional fencing. The original application was for a fence. There is a difference between a chain link fence and a wall. The setback requirements are difference different between a wall and a fence.

A fence has a 3' setback and a wall has a 15' setback. What they have is classified as a wall.

Serocki: My understanding is that with a non-conforming, you can fix or repair and that would not make it more non-conforming.

Hayward: You can fix or repair as long as you do not make it more non-conforming.

Wahl: It would not be a fence-to-fence anymore; it is now fence to wall.

Serocki: So on the enclosed porch that would be the same thing. The non-conforming slab that is for a 3 season porch is still going to be a non-conforming slab.

Hayward: The stop work order was placed by the zoning administrator because she considered the porch to now be a change in use. There is no doubt that they are now enclosing a space that was not enclosed before. They will need a land use permit for any of the variances they are requesting.

Cowall: Are there any safety parameters for the wall that you are aspiring to as opposed to a fence that is something you can see through?

Goulas: I spoke with Hayward and learned the difference between a fence and a wall. So I did not think there was any restriction as it was already non-conforming. We thought the same thing about the 3' patio.

Smith: Section 7.5.4 of the Zoning Code ordinance reads

"Section 7.5.4 Repair and Alteration of Non-Conforming Structure: Nothing in this Ordinance shall

prevent the repair, alteration, reinforcement, improvement or rehabilitation of a non-conforming building or structure or part thereof existing at the effective date of this Ordinance that may be necessary to secure or insure the continued advantageous use of the building or structure; provided, however, that such repair, alteration, reinforcement, improvement or rehabilitation proposes no change in the use of said building or structure or any part thereof.”

Cowall: This would be the case for the patio if there were already some windows and walls and you ripped it up and rebuilt it. Enclosing space takes you out of that realm. You are adding something there that was not there before. Adding a roof over the top of the patio that was not there before is a change.

Smith: The existing deck was above the patio and already existed.

Soutar: You did make mention in your presentation that rain was falling through the deck onto the patio below. The inference here is that you are going to prevent this by enclosing it and that makes it a whole different kind of structure. You have now made it impermeable.

Serocki: If they were putting a railing up for safety because of the 4 foot drop, would that be allowed or would that be considered a change of use?

Haywood: We are not dealing with speculation. All we are dealing with is what they are asking for here.

Soutar: Is there anything else you would like to present to the board? That would then conclude the presentation.

Anyone in the audience wish to speak in favor of this: None

Is there anyone who wishes to speak against this proposal? Yes.

Lorinda Miller 5140 Aintree Rd. Rochester, Mi.

I am here representing Faye Miller who lives at 9888 Center Rd. I now have an additional document for the board that I did not give you in advance. (Passes out materials to the board and applicant.)

Miller reads a letter dated August 6, 2018 addressed to the Zoning Board of Appeals. (A 7 page PDF of the letter is at the end of the minutes)

Miller then explains three pictures that were included in the materials.

Wahl: If this started before the building, did you ever consider a civil action to stop them prior of them getting this far?

Miller: We were not aware of this. The first picture I took was on October 8, 2017 after everything had already been done. Faye Miller called us. We drove up on Sunday and on Monday called Deeren. There was no advance opportunity. We have been trying to resolve this with Deeren.

Soutar: Is there anyone else who wants to speak against the proposal?

Michael Goulas 9898 Center Rd requests to speak to some of the allegations.

Soutar: You may have 2 minutes for rebuttal.

These allegations are just that. I am not sure why we have become a target of something that borders on harassment. There was an existing fence on the side where there was an

existing chain link fence. There is proof there was a fence there. When we bought the property, we had the property surveyed. We did cut down trees that the survey showed were on our property. We would not just start cutting down our neighbor's trees. The neighbor on the other side of the house gave us a verbal ok to cut down that tree. All permits have been verified. The Millers have been calling Grand Traverse County and the Peninsula Township repeatedly. If we are doing something wrong, we will fix it. I am still failing to see where we have done something wrong.

Cowall: You were working off a different land survey when you cut the vegetation down? Is that survey different than the survey from two weeks ago?

Goulas: In the first survey the corner piece of the south side was moved because of the sea wall and then it caused all sorts of problems with the neighbors. So we had the property resurveyed. If we did something wrong, we will fix it. We have gotten tired of people just walking onto our property and taking pictures, so we did call the police and reported people trespassing on the property. There has been no new work since the cease and desist order. We did put up some boards to protect the property per Hayward's permission. I need clarification and I am kind of lost. We want to play by the rules and be good neighbors.

The discussion now turns to the board.

Serocki: I will start with Request 1 one, the wall on the south side. The wall should not be there; it is going to interfere with traffic. The bumpers in front of the windows I am not sure that this is something that we have to vote on. Regarding the pre-existing, non-conforming covered porch, I do not see the change. Three season porches are cold or hot depending on the weather and if there is not any insulation, I do not see the difference. There is not a change in lot coverage.

McBride: For Request 1, I can see the point about the difference between a wall and a fence. When there are other options, we have to choose them. Request 2 sounds like it is a violation as it would not prevent them from living in the home. For Request 3 there was not a change in the square footage, but it did not have walls before and now it does, so that indicates a change in usage.

Cowall: Still unclear if the covered porch is the same footprint as the old slab or not.

Wahl: This extra piece on the top sticks out further. (Reviews photo with Cowall).

Cowall: The walls of the covered space on the first floor appear to be following the old footprint. What about the cantilevered back on top. There was always a deck on top.

Hayward: The support for the upper deck is the same size.

Cowall: Change of use or not change of use- does the use of drywall or the use of insulation change your line of thinking?

Soutar: Insulation usually indicates a year round structure.

Cowall: So if thing were built and this winter the house was chilly and they installed insulation, how does the township know if this were to occur?

Serocki: I don't know how this would be policed by the township.

Cowall: That part of the road is so tight so I can appreciate some type of parking lot posts. I am not an engineer and do not know how effective something like that would be. Everything is so tight so whatever gets added closer to the road is a big deal. During the site visit in June one could tell that if you have a solid structure there it is harder for everyone to see. There are no variance issues on the north side of the property in terms of fencing as there is a good 90' to the adjacent northern property.

Hayward: When I was out there the Goulas were talking about putting a fence out there. A fence has a 3' setback and a wall has a 15' setback requirement for the north property side.

Cowall: It is a little bit outside of our normal requests for us with the property disagreements with the neighbors. I would think that some measure of vegetation on a lot like this would be highly desirable being so tight on the water with such a unique grade with the 3 season room dropping right off of there to the ground and being right on top of a rip-rap. So it sounds like folks are starting to iron that out. I would be in favor of documenting some type of agreement with the neighbors that if vegetation was removed from someone else's property, that it be restored.

Soutar: As far as the three requests regarding the first one for granting a variance I cannot see any way that this would be acceptable if it was a wall. We do not have an initial site plan and the preponderance of proof lies with the applicant and that has not been submitted. For Request 2, with this type of road I am absolutely adamant that I will not accept any variance. On the south side I would want to make a codicil that they cannot put anything other than a chain link fence or an open weave fence that would maintain the view site from the neighboring property so as not to impede vision to the road. As far as the 3 sided covered porch I can see that there might be insulation in it; I can see evidence that they might have redone the wall. Again, they did not submit a proper site plan and all we have is a survey and the preponderance of evidence is with the applicant. The open porch should be used exactly as it is. The roof hang has been extended and that is probably not allowable under the current ordinance as it is an extension of an existing structure and if that is the case, if it was not there before it is certainly not allowed now. I would not be in favor of enclosing this. A railing is in order to prevent people from falling off, but not to enclose the porch as it is too much like an enclosed room.

Serocki: Asked if Hayward had seen the site plan when the house was being worked on. I was under the impression that on the site plan it showed the porch was to be enclosed but they did not ask to do it at the time the house was being worked on and that they would come back later. I did not see that site plan but that is what I heard from Deeren in June.

Hayward: I did not see the property until after everything was built and he did not see the plans. All I observed was from pictures.

Serocki: Would have been helpful for us to see the site plan to the house. I think we need more information.

Cowall: Typically, we have a pretty detailed building plan in our packet. I do not know what the applicants are working off of. We do not know what we really are dealing with in terms of a changed footprint.

Serocki: I have a question on Request 1. They want a wall and not a fence.

Soutar: They are asking for a wall.

Cowall: If a request for a variance is denied, do you have to wait a year to reapply?

Hayward: If a request for a variance is denied, the applicant cannot apply for the same variance for one year. You can apply for a different variance. If they came back and said we want to put up a fence instead of a wall, then that would be a different request.

Soutar: They are asking for a variance of 1'. We have two things to consider: was it a wall or a fence and a wall would be 1' or a fence would be 3' away. We could deny a wall and approve a fence. The previous asking was for a fence and now it is for a wall.

Cowall: This would be easier for me if I knew that a fence had already been there and we just backtrack off of the wall.

Action- Motion Cowall moves that Request No. 866 Requesting a variance of fourteen feet from the required fifteen foot south side yard setback to place a wall one foot from the property line be denied as a wall and an open weave fence tracking the footprints of the existing slab be approved. Serocki seconded.

Passed Unam

Action- Motion Cowall moves to deny the request for a variance of twenty-four feet from the required twenty-five foot front yard setback to place a wall one foot from the right-of-way of Center Rd. Serocki second.

Passed Unam

Action-Motion Wahl makes a motion to table Request 3 until the next ZBA meeting on September 13, 2018 to gain additional information on the pre-existing structure with a second by Cowall.

Passed Unam

Soutar: Thank you for your presence and your application.

B. Request No. 867, Zoning A-1

Applicant: Thomas L. Kramer, 15410 Center Rd., Traverse City, MI 49686

Owner: Thomas L. Kramer, 15410 Center Rd., Traverse City, MI 49686

Property Address: 15410 Center Rd., Traverse City, MI 49686

1. Requesting a 150 foot variance from the required 330 foot lot width for a proposed lot line adjustment to 180 feet in order to provide legal access from M-37.

Parcel Codes: #28-11-115-032-00 & 28-11-115-029-00

Soutar: Does staff have any information for the board?

Hayward: The uniqueness of the Kramer property is that it is in two parts. The property drops very dramatically to the east. There is an existing house on the property. The other issue is that there is a small cut out on their property that we call the telephone company building. There is no access to Smokey Hollow Rd.; their only real access is from Center Rd. The only way to develop the property under the ordinance would be to build a private road either on the north or south line and extend that private road with a turn around and then the parcel they want to split off would have access from that internal road and the second parcel would have that 330'

on Center. The problem is the topography makes it a different problem for them than what a normal parcel would be. I feel that there is enough difference between that parcel and other parcels along Center Rd. that they have a case to ask for a variance. The way the current house is located, they cannot get 330' off of Center Rd. On the south side they are asking for relief due to the cutout of the telephone building. The driveways would split and diverge once they reached the right of way line at M37. In doing this they would be able to utilize their frontage along Center Rd. and also provide access to the back of the property. They are asking for approval of a land division. If they were turned down they would have considerable expense in dealing with the slope of the property. These are two existing properties with their own parcel number and are owned by the same owner. If you were to grant approval to lessen the frontage, they would still have to go through a zoning review. The assessor, zoning administrator, attorney, and planner would have to sign off. If you were to grant their variance they would still have to go through that process to make sure that the Land Division Law and the Zoning Ordinance are met.

Soutar: I now turn the floor over to the applicant to present their request.

Renee Kramer 15429 Smoky Hollow Rd.

My husband built our house on the back parcel on Smokey Hollow Rd. in 1972. At that time he was granted a 25 foot easement for us to enter that property. Whoever was developing that property took some equipment and created a big cliff there so we could never go through there. A farmer (Wells) at 15410 Center Rd. gave us permission to access our property through a cherry orchard that was there at the time. Since 1972 we have been driving on a two-track to Smoky Hollow Rd. When they built down on Smokey Hollow where our easement was, they put a garage on one side of the easement and a house on the other. Now to get to our property we need to drive between their house and garage. My husband said to the Wells, with whom we had the handshake agreement that if he was going to ever sell that property on Center Rd., we would buy it and that is what we did. Now my husband's health is deteriorating. Blarney Castle Oil will no longer deliver down the two-track to our home and an ambulance or fire truck would have difficulty getting to our home. If we could have a variance to come in from Center Rd. because we will likely sell that property back there, but we cannot sell it if the land is locked. We want to be able to say to a potential buyer these are your options such as to build a road or you can do what we have been doing, which is going back on the two-track. And now the orchard that is between these two properties will be removed this year as this is our last year for that to be farmed. When that is removed, I think we will have some excavation done in there so that was will make it easier to go back there.

Cowall: How big are the resulting two lots?

Kramer: The property is 17 acres all together.

Cowall: So you had an easement on the property from Smoky Hollow?

Kramer: Yes, our address is on Smoky Hollow Rd.

Cowall: So someone built upon that easement?

Kramer: The easement was on their driveway and then they constructed their house and on the

other side of the driveway they built a garage.

Soutar: So the driveway is your easement.

Cowall: So that does not prevent you from still using their driveway?

Kramer: They have taken a scoop that prevents us from using the driveway.

Any member of the audience want to speak in favor of this request? None

Any members of the public wish to speak against this request? None

Cowall: There are not a tremendous number of options here.

The applicant is requesting a 150 foot variance from the required 330 foot lot width for a proposed lot line adjustment to 180 feet in order to provide legal access from M-37.

Action-Motion Cowall moves that all of the basic conditions for a variance have been met and moves that this request be approved. Second by Wahl.

Passed Unam

C. Request No. 868, Zoning R-1B

Applicant: Arthur and Karen Schwarm, 11602 Bluff Rd., Traverse City, MI 49686

Owner: Schwarm Joint Trust, 11602 Bluff Rd., Traverse City, MI 49686

Property Address: 11602 Bluff Rd., Traverse MI 49686

1. Requesting a variance to exceed the percentage of lot coverage from the allowed 15% to 29.57%
2. Requesting a variance from the required front yard setback of 30 feet for a structure to access property to be placed within the road right-of-way.

Parcel Code: #28-11-685-004-00

Haywood: They are not proposing to build anything that affects the road right-of-way. Item 6 shows the house being on Center Rd. and that should read Bluff Rd. What they proposing to do is build a platform to park a car in the winter where they do not need to walk down the steep driveway. This platform would be connected by an elevated walkway to the house.

Kelly Kerlin-Ropposch 8151 Bel-Cherrie Drive

I am representing Art and Karen Schwarm of 11602 Bluff Rd. We are approaching you today for two variances. The first request is to place a new structure within the front yard setback basically due to the topographic challenge of the site. The driveway is like a black-diamond ski slope and they travel 24-26 steps up and down from Bluff Rd. to get to the house level of the garage. In the winter time as well as the summer time people park on Bluff Rd. in the right-of-way. Perhaps we could find a place where you could park your car somewhere else. In figuring out how to do this we came up with a one car parking deck timber. We would get out of the right of way. The solution is a proposed new timber parking platform structure to be located with the 30' setback and would allow for a one single car parking space that would clear the

right of way on Bluff Rd. The new structure would also allow for access to the home by the construction of a bridge connector and new landing with a new door to enter the loft above the existing garage. This is the most economic approach to the structure and the least amount of existing landscape and bank disturbance. The second variance is required because the current garage triangulates into the west yard setback with a prior approved variance when the house was built in 1974.

Any other members of the audience want to speak in favor of this proposal? None
Are there any members of the public who wish to speak against this proposal? None

The paperwork showed there had been more than one owner. This was a mistake in the paperwork and the house only has had one owner, who requested to speak.

Arthur Schwarm 11602 Bluff Road

I am the original owner and I build the house in 1974 when I was 32 years old. I was able to do the snow blowing and we did not have neighbors at the time. I was able to jockey the cars back and forth. I am 78 now. I now have someone plow the shoulder where I park but you do not know if they are coming at 5 am or 5 pm and if the cars are there he can't plow. We figure we would only need one car for the winter as we are not here all year round and sometimes we are able to use the driveway in the winter depending upon the conditions. The big benefit of the variance would be the car being moved out of the right of way on Bluff Rd. The platform would elevate the car and the shoulder could be plowed. This is going to be a significant expense to build, but we want to stay in the house. This would increase the safety conditions for my wife and me.

Wahl: There is a current garage on the property, correct?

Schwarm: Yes, there is a two car garage.

Wahl: So you do have the driveway plowed?

Schwarm: We can only snow blow the driveway. The driveway is used months 9 out of the year and the platform would be used in extreme weather.

The discussion is returned to the board.

Cowall: I understand what they are trying to do. I struggle with adding additional lot coverage. This is different than adding an addition to a house. We are looking at an extreme variance in terms of full lot coverage. I also struggle with the self-created hardship piece since this is the original builder of the house.

Soutar: This would create an extra outlet and entry onto the road and there is a potential for 3 cars.

Serocki: I have noticed how many houses have paved the right of way. Is this legal?

Haywood: There have been discussions with the road commission and as long as there is not an additional paved curve curb cut, this is legal.

Wahl: I see the safety hazard by adding an additional access out to the street. I do see that this is a unique solution to their problem.

Soutar: We should rule on Request 2 first, as Request 1 makes no sense without the variance for the setback. I would entertain a motion

Serocki: makes a motion that the platform setback of 30 feet be approved for access to the property. No second motion occurs.

Action-Motion: Cowall moves that the request for a variance from the required front yard setback of 30 feet be denied.
Second by Wahl.

Roll call vote: Ayes Soutar, Hayward, Wahl, McBride, Cowall
Nays Serocki

Action-Motion Cowall makes a motion that the request for a variance to exceed the percentage of lot coverage from the allowed 15% to 29.57% be denied. Second by Wahl.

Roll call vote: Ayes Soutar, Hayward, Wahl, McBride, Cowall
Nays Serocki

Soutar: Thank you and good luck. This is a tough one.

9. Citizen Comments

Nancy Heller – 3901 Blue Water Rd. When a request is made to cut trees, this should take place between December and April according to an arborist. I learned this during a discussion at the Park Commission Meeting last night and just wanted to pass this along.

Approval of Minutes from June 14, 2018 Meeting:

Three corrections to the minutes were recorded and will be placed on the Peninsula Township website as Amended Minutes.

Action-Motion: Wahl moves to approve the minutes with a second by Cowall.

Passed Unam

10. Board Comments

Serocki: The Zoning Ordinance rewrite has been submitted to McKeena and a new Peninsula Township Planner began on July 31, 2018.

11. Adjournment Cowall 10 pm

Respectfully submitted

Lola Jackson Recording Secretary