

PENINSULA TOWNSHIP
Zoning Board of Appeals
August 11, 2016

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

Roll Call

Present: Vida, Cowall, Wunsch, Soutar and Witkop

Absent: None

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

Approve Agenda

Request No. 853 has been removed by applicant. Site plan provided by applicant is not correct.

MOTION: Cowall/Soutar to approve the agenda as amended. **MOTION PASSED**

Conflict of Interest

None

Communication Received

Additions were provided to the Commission and are on the Township website.

Brief Citizens Comments – for items not on the agenda

Louis Santucci, 12602 Center Rd., he submitted letter on an item on the agenda. It came to his attention that his letter and a letter submitted Mari Vineyards were given to the Board at 4:00 pm. He believes this is not a good way for the Commission to be able to read and understand. He also asked what an interpretation versus Zoning Ordinance amendment is. **Reardon** said the Board received the information yesterday.

Scheduled Public Hearings

A. Request No. 853, Zoning R-1C

Applicant: Daniel & Margaret Casey, 7002 Peninsula Drive, Traverse City, MI 49686

Owner: Daniel & Margaret Casey, 7002 Peninsula Drive, Traverse City, MI 49686

Property Address: 7002 Peninsula Drive, Traverse City, MI 49686

Requests: (1) a variance of up to 9 feet from the 30 foot rear yard setback requirement to allow for the construction of a detached garage; and (2) a variance of up to 9 feet from the 15 foot side yard setback requirement to allow for the construction of a detached garage.

Parcel Code No. 28-11-325-085-00

Removed from agenda

B. Request No. 854, Zoning R-1B

Applicant: Joseph & Felicia Manhart, 2959 Mona Lisa Blvd, Naples, FL 34119

Owner: Joseph & Felicia Manhart, 2959 Mona Lisa Blvd, Naples, FL 34119

Property Address: 13415 Bluff Rd., Traverse City, MI 49686

Requests: (1) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (2) a variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (3) a variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (4) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (5) a variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

Parcel Code No. 28-11-420-021-00

Schoolmaster reviewed the request.

Joe Manhart, 13415 Bluff Rd., said this is two pieces of property (Lot 21 and 24). Trees were cut down by a previous owner. After walking the he property noticed the roots and trunks were decaying. The hill has about a 32% grade. The erosion needed to be repaired. The Association's shared frontage has a 24" high retaining wall up to his property line. Mr. Manhart submitted soil erosion applications with the County and thought he had his bases covered. He was informed he was out of compliance by an Association member. Mr. Manhart then came to Township to correct situation. He is asking for five variances. Association does not have problem with walls and has had no negative responses from association members.

Vida said it is his understanding that if the variance is approved the Association will request a variance to tie the two retaining walls together. *Mr. Manhart* said correct. **Vida** asked if there are any DEQ issues. *Mr. Manhart* said not to his knowledge. **Reardon** said it is all above the Ordinary High Water Mark. **Cowall** asked who engineered this solution. *Mr. Manhart* said he did. **Cowall** asked if the applicant had experience with shorelines. *Mr. Manhart* said he was an industrial engineer for UPS. **Vida** asked if the County Soil Erosion department thought Mr. Manhart's layout was acceptable. *Mr. Manhart* said yes.

Vida opened the Public Hearing at 7:18 pm.

Bob Rudd, 12399 Bluff Rd., said lives about a mile south of property. There has been high water and low water. Did Mr. Manhart investigate native plants to stop erosion on that hillside? Any development done between Bluff Road and the Bay is going to detrimental to the Bay.

Kent Rabish, 13383 Bluff Rd., said 15 years ago the trees were cut. The owners at the time had to come into Township because there were a lot of angry people. The previous owners were told to plant bushes or trees to try to keep the soil back. A dozen little bushes were out in the ground and were not taken care of. Everything was slipping and sliding and something needed to be done. The current owner would not need a wall if the trees were not cut down.

Vida closed the Public Hearing at 7:21pm

Reardon explained the Amendment 190 changes to the basic and special conditions.

Witkop suggested dealing with the five variances at one time.

MOTION: Vida/Soutar to handle with the five variances at one time. **MOTION PASSED**

Soutar asked about Zoning Ordinance changes regarding retaining walls. **Reardon** said the Planning Commission will be discussing fences and retaining walls on Monday. **Cowall** said he has a concern about projects being built before any contact with the Township and knowing whether or not that the project is the best solution. **Reardon** said Staff is building a rapport with the County and as far as expertise the Soil Erosion Department is the permit the Township would look for in this situation. The Township dictates standards but allow applicants choose a path. **Witkop** said when Assessor is processing deeds she could give that information to the Zoning Department to send out generic letter to the resident about Zoning. As far as the retaining walls it appears to her the placement was logical. **Soutar** said problem is cannot direct people to do the right thing. The fact is the erosion was there. Retain wall(s) are the only solution because getting vegetation to grow in sand is difficult.

Peninsula Township Planning & Zoning Department

FINDINGS OF FACT

ZBA Request #854 – 13415 Bluff Road

August 11, 2016

DECISION AND ORDER

Applicant: Joseph & Felicia Manhart, 2959 Mona Lisa Blvd, Naples, FL 34119

Hearing

Date: August 11, 2016

PROPERTY DESCRIPTION

The property of 13415 Bluff Road, Traverse City, MI 49686, Parcel No. 28-11-420-021-00 herein after referred to as the “property”.

APPLICATION

Requests: (1) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (2) a variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (3) a variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (4) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (5) a variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

The Board having considered the Application, a public hearing having been held on August 11, 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 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 that the lot was created in 1990 and is conforming. (Exhibit 1, 2)
3. The Board finds that the existing retaining walls do not conform to relevant zoning standards. (Exhibits 2, 3, 4)
4. The parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
5. The Board finds that the applicant requests a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion. (Exhibit 3)
6. The Board finds that the applicant requests a variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion. (Exhibit 3)
7. The Board finds that the applicant requests a variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion. (Exhibit 3)
8. The Board finds that the applicant requests a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion. (Exhibit 3)
9. The Board finds that the applicant requests a variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion. (Exhibit 3)

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

ROLL CALL VOTE: Witkop – yes; Cowall – yes; Vida – yes; Soutar – yes; and Wunsch – yes.

MOTION PASSED UNAN

Variance Request #1 A variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

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 has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Cowall the standards of basic condition number one have been met, especially letter “c.”

MOTION PASSED UNAN

- 2. 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 the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that the current condition of the vegetation has deteriorated to such an extent that would create further erosion. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Wunsch the standards of basic condition two have been met.

MOTION PASSED 4-1 (Cowall)

- 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.)

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) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)

- b. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- c. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- d. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes, which is a goal of Peninsula Township planning and zoning. (Exhibit 3)

This standard HAS been met.

MOTION: Witkop/Wunsch the standards of basic condition three have been met.

MOTION PASSED UNAN

- 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 HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Witkop the standards of basic condition four have been met.

MOTION PASSED 4-1 (Cowell)

- 5. That the 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 HAS been met.

- a. The Board finds that generally existing retaining wall is unlikely to cause adverse impacts of the subject property or that of any neighboring properties. (Exhibits 3, 4)

This standard HAS been met.

MOTION: Witkop/Soutar the standards of basic condition five have been met.

MOTION PASSED UNAN

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 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) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)

This standard HAS been met.

MOTION: Vida/Witkop the standards of basic condition six have been met.

MOTION PASSED UNAN

Variance Request #2 A variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

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 has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Cowall the standards of basic condition number one have been met, especially letter "c."

MOTION PASSED UNAN

2. 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 the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that the current condition of the vegetation has deteriorated to such an extent that would create further erosion. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Wunsch the standards of basic condition two have been met.

MOTION PASSED 4-1 (Cowell)

- 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.)

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) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- c. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- d. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes, which is a goal of Peninsula Township planning and zoning. (Exhibit 3)

This standard HAS been met.

MOTION: Witkop/Wunsch the standards of basic condition three have been met.

MOTION PASSED UNAN

- 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 HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Witkop the standards of basic condition four have been met.

MOTION PASSED 4-1 (Cowell)

- 5. That the 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 HAS been met.

- a. The Board finds that generally existing retaining wall is unlikely to cause adverse impacts of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b.

This standard HAS been met.

MOTION: Witkop/Soutar the standards of basic condition five have been met.

MOTION PASSED UNAN

- 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 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) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)

This standard HAS been met.

MOTION: Vida/Witkop the standards of basic condition six have been met.

MOTION PASSED UNAN

Variance Request #3 A variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

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:

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The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Cowall the standards of basic condition number one have been met, especially letter "c."

MOTION PASSED UNAN

2. 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 the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that the current condition of the vegetation has deteriorated to such an extent that would create further erosion. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Wunsch the standards of basic condition two have been met.

MOTION PASSED 4-1 (Cowall)

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.)

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) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- c. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- d. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes, which is a goal of Peninsula Township planning and zoning. (Exhibit 3)

This standard HAS been met.

MOTION: Witkop/Wunsch the standards of basic condition three have been met.

MOTION PASSED UNAN

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 HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Witkop the standards of basic condition four have been met.

MOTION PASSED 4-1 (Cowell)

5. That the 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 HAS been met.

- a. The Board finds that generally existing retaining wall is unlikely to cause adverse impacts of the subject property or that of any neighboring properties. (Exhibits 3, 4)

This standard HAS been met.

MOTION: Witkop/Soutar the standards of basic condition five have been met.

MOTION PASSED UNAN

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 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) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)

This standard HAS been met.

MOTION: Vida/Witkop the standards of basic condition six have been met.

MOTION PASSED UNAN

Variance Request #4 A variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

FINDINGS UNDER SECTION 5.7.3 VARIANCES OF THE ZONING ORDINANCE

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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 has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Cowall the standards of basic condition number one have been met, especially letter “c.”

MOTION PASSED UNAN

2. 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 the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that the current condition of the vegetation has deteriorated to such an extent that would create further erosion. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Wunsch the standards of basic condition two have been met.

MOTION PASSED 4-1 (Cowall)

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.)

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) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- c. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)

- d. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes, which is a goal of Peninsula Township planning and zoning. (Exhibit 3)

This standard HAS been met.

MOTION: Witkop/Wunsch the standards of basic condition three have been met.

MOTION PASSED UNAN

- 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 HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Witkop the standards of basic condition four have been met.

MOTION PASSED 4-1 (Cowell)

- 5. That the 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 HAS been met.

- a. The Board finds that generally existing retaining wall is unlikely to cause adverse impacts of the subject property or that of any neighboring properties. (Exhibits 3, 4)

This standard HAS been met.

MOTION: Witkop/Soutar the standards of basic condition five have been met.

MOTION PASSED UNAN

- 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 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) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)

This standard HAS been met.

MOTION: Vida/Witkop the standards of basic condition six have been met.

MOTION PASSED UNAN

Variance Request #5 A variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

FINDINGS UNDER SECTION 5.7.3 VARIANCES OF THE ZONING ORDINANCE

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- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Cowall the standards of basic condition number one have been met, especially letter "c."

MOTION PASSED UNAN

2. 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 the property has unique topography that slopes from west to east. (Exhibit 2, 3)

- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that the current condition of the vegetation has deteriorated to such an extent that would create further erosion. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Wunsch the standards of basic condition two have been met.

MOTION PASSED 4-1 (Cowall)

- 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.)

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) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- c. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- d. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes, which is a goal of Peninsula Township planning and zoning. (Exhibit 3)

This standard HAS been met.

MOTION: Witkop/Wunsch the standards of basic condition three have been met.

MOTION PASSED UNAN

- 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 HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)

- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)

This standard HAS been met.

MOTION: Soutar/Witkop the standards of basic condition four have been met.

MOTION PASSED 4-1 (Cowell)

- 5. That the 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 HAS been met.

- a. The Board finds that generally existing retaining wall is unlikely to cause adverse impacts of the subject property or that of any neighboring properties. (Exhibits 3, 4)

This standard HAS been met.

MOTION: Witkop/Soutar the standards of basic condition five have been met.

MOTION PASSED UNAN

- 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 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) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)

This standard HAS been met.

MOTION: Vida/Witkop the standards of basic condition six have been met.

MOTION PASSED UNAN

VARIANCE REQUEST # 1-5 MOTION TO APPROVE

MOTION: Witkop/Wunsch all five of the variance requests for applicant ZBA number 854 be granted based on the findings of fact as modified.

**ROLL CALL VOTE: Wunsch-yes, Soutar-yes, Vida-yes, Cowall-yes and Witkop-yes
MOTION PASSED UNAN**

The Peninsula Township Board of Appeals has **APPROVED** your request for (1) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront

erosion; and (2) a variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (3) a variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (4) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (5) a variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant’s variance requests #1-5 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

June 23, 2016 Special Meeting

MOTION: Vida /Cowan to accept the June 23, 2016 minutes as presented. **MOTION PASSED**

Old Business

Request No. 847, Interpretation (Adjourned from June 23, 2016)

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.3 (10) (u) - What constitutes a “guest activity use” as opposed to what is allowed in the tasting room of a Winery Chateau without a guest activity use permit?

Wendling said there was question on the authority of the Zoning Board of Appeals to engage in interpretation. Section 5.7.2 (1) – “The Board of Appeals shall have the power to interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of this Ordinance.” Usually requests for interpretation are rare and the only reason they are done without seeking clarification through zoning amendment is when there is a more exigent circumstance arising that needs to be dealt with immediately. Opposed to waiting for a change in

the ordinance which may address the problem. In this case there were enforcement problems. Wendling believes those circumstances at least related guest activity are not that important today as perhaps they were thought to be back in May and June due to other facts that have come to light. Wendling recommended not to adopt the resolution but to have this matter addressed through the zoning amendment process. This goes back to Article VIII 10 d – “Guest Activity Uses do not include wine tasting and such related promotional activities as political rallies, winery tours and free entertainment (Example - “Jazz at Sunset”) which are limited to the tasting room and for which no fee or donation of any kind is received.” Underneath it, it states about uses allowed when a Guest Activity permit is issued. We are trying to figure out if it is a paid event and the winery does not have a guest activity permit is the winery allowed to engage in that activity. Marie-Chantal Dalese, President and CEO of Chateau Chantal, stated in a letter “it is clear to me the intent of this interpretation. A winery-chateau without a guest use permit should not be hosting paid events until they have meet the requirements.” How do you have solid language that prevents that from occurring when a fee can be taken in so many different ways? Perhaps that language already cited is the main problem as opposed to what is outlined as being allowed with a Guest Activity Use. Some of the other wineries and members of the public have concerns about what is going on at a certain winery. That does need to be worked on regardless but a better route at this point is to allow a zoning amendment to work. Some of these businesses including some of the winery/chateaus have looked at this resolution and said it is not quite what we believe it to be as far as the activities they engage in. One thing that could be done is if you do not have a guest activity uses permit maybe hosting events could be something that the zoning ordinance is meant to prohibit. It would be a standard that is clear and easily understandable. The points raised by the letters from the wineries are well founded and the exigent circumstance requesting the interpretation has passed as there are other issues to address involving the winery in the township.

Wendling asked Marie-Chantal Dalese to express her understanding of what the difference is and what her winery has received as a result of obtaining a guest activity permit and how that differentiates from a winery that does not have such a permit.

Marie-Chantal Dalese, President and CEO of Chateau Chantal, said she does know if there is a need for further ordinance amendments to address this. There is fussiness regarding political rallies but it does seem clear the divide between what you can do with a guest use activity permit versus what can be done in the tasting room without a permit. The guest use activity permit for Chateau Chantal came about as a two sides coming to an agreement where no one was necessarily happy but that is the agreement which what we have now in the ordinance. Chateau Chantal built there model based on the ordinance. The types of guest use activities Chateau Chantal does must conform to the rules listed in the ordinance. Chateau Chantal has been successfully with the wine education component. The goal on the peninsula is to tie our wineries to agriculture. Chateau Chantal has been able to use this ordinance to promote and have successful guest use activities that use peninsula produce and follow the rules. Pass that there is the idea there are the B&B privileges. Also in the tasting room with no charge there can be things like Jazz at Sunset.

Reardon said the discussions the Zoning Board of Appeals has already had regarding this issue. After those discussions language was crafted to summarize the ZBA conclusions. When that resolution went out we heard from other winery/chateaus. This resolution may impact their business model which is

fully in compliance with the ordinance. What the conversation has done is point us to the direction of the Planning Commission so they can solidify this through the new ordinance or an amendment.

Cowall asked where does this leave staff with enforcement. **Reardon** said the conditions surrounding the issue are not as dire as they once were. It does not mean the problem has gone away completely but it means that several things have lead staff to believe perhaps this does warrant more of an amendment process rather than an interpretation. **Cowall** said he is comfortable to take no action tonight.

New Business

Township Board Report (Witkop)

Planning Commission Report (Wunsch) said he was unable to attend the July Planning Commission meeting.

Adjournment

MOTION: Wunsch/Witkop to adjourn at 8:22p.m. **MOTION PASSED**

Respectfully submitted by Deb Hamilton, Recording Secretary