

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

13235 Center Road  
Traverse City, MI 49686  
September 13, 2018  
7:00 p.m.

1. **Call to Order** Soutar called the meeting to order at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Serocki, McBride, Soutar, Cowall, Wahl, Deeren (Zoning Administrator), Meihn (Peninsula Township attorney)
4. **Approval of the Agenda** Cowall makes a motion for the approval of the agenda with Item #7 Approval of the Minutes from August 9, 2018 Meeting be moved to come after Item # 9 New Business. Wahl seconds. **Passed Unam**

**Conflict of Interest** Wahl needs to recuse himself from Request No. 866 as his wife's law firm has now been hired by the Goulas. A voice vote was taken to allow Wahl to recuse himself from Request No. 866 Ayes: Serocki, McBride, Soutar, Cowall, Wahl. **Passed Unam**

5. **Brief Citizen Comments – for items not on the Agenda** None
6. **Approval of Minutes from August 9, 2018 Meeting (Moved)**
7. **Old 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

**Soutar:** Request No. 866 Item 3 was tabled at the August 9, 2018 meeting pending additional information on the pre-existing structure. Information is now available.

**Action- Motion** Cowall moves that Item 3 from Request No. 866 be brought back to the table with a second from Serocki.

Voice Vote: Ayes: Soutar, Cowall, Serocki, McBride

**PASSED UNAM**

Soutar: Item 3 is back on the table. The board discussed having the same people hear the

continuation of a case that has been tabled. There was agreement that 5 individuals hearing a case is best whenever possible; however, it should not slow down the process.

**Meihn** stated while it was not necessary for the same people to hear the case, it is a best practice, and in no way does the process need to be slowed or stopped if this does not occur.

**Soutar:** There was a neighbor's letter complaining about the decision regarding Item 1 in this case. The request was for a variance of fourteen feet from the required fifteen foot south side yard setback to place a wall one foot from the property line. The board denied this as a wall and approved an open weave fence tracking the footprint of the existing slab.

I would like to make three points. 1. There was a fence and there were post holes in the concrete that indicated where the fence was located. There was no permit to put this fence up. There is evidence of a pre-existing fence on the south side. What I could not confirm was if there was a pre-existing fence on the east side. 2. There was no fence on the south side that was permitted and that we did not approve. 3. There is a safety issue if you have an egress, ingress for a vehicle and not having some sort of barrier on that side creates a hazard and a potential threat to fall off that concrete pad. Those are the three items I thought we based our decision on and I would like to know what the rest of the board thinks and we will start with McBride.

**McBride:** The thing that stood out for me was the level of conflicting information.

**Cowall:** The issue was if the fence surface needed to be transparent

**Serocki:** Yes, they requested a wall and we changed it to a fence.

**Soutar:** Moving on to Item 3, the following items have come in as new information. We have a letter we received yesterday September 12, 2018 from the Millers and signed by Lorinda Miller. Asks if the Goulas have received a copy of this letter (Whitney Goulas said they did). There were two photos attached dated June, 2017 showing the porch. That was the additional information submitted. The Goulas then passed out additional information to the board.

Whitney Goulas 9898 Center Rd

The photos submitted show that we have not increased the square footage. We have the architectural drawings and photos that show this is not the case, which we have just given you.

**Cowall:** Do you have architectural drawings?

Goulas: Yes, we submitted them all to Deeren.

**Soutar:** So the additional information submitted will be labeled as Item A being the letter from the Millers and Item B being the information the Goulas have given us tonight. The applicant wishes to make a presentation and they are to address the issue at hand, which pertains to Item 3 of the request.

Dane Carey Law Firm Dingeman and Dancer 100 N. Park St. Traverse City 49684

There is one photo that I would like to point out in the packet you received that shows there has not been any encroachment into the high water mark area. I think that is important. There are two things that need to happen under the ordinance. One is if there has been any additional encroachment under the ordinance. There is no additional encroachment into the setback area as these pictures show. There is not any increasing

intensity in residential use. This was a 3 season patio with a substantial roof over it and now it is just an enclosed patio. The reason it has been enclosed is that there is a steep wedge now onto a rocky area and the Goulas have a child. They have not added any heat and they have not added any type of amenities that are on the inside other than walls and windows. They intend to use it for the same 3 seasons as it was used before. I believe granting of a variance in this case is appropriate. Thank you.

**Soutar:** This is the end of the applicant's presentation. Is there anyone who would like to speak in favor of the applicant?

**Soutar:** Seeing none; is there anyone who wishes to speak against the proposal?

Lorinda Miller 5140 Aintree Rd. Rochester, Mi.

I created a packet and I promise you it is not as long as last time. I submitted all of the additional pictures to the website.

**Deeren:** All of the information from this packet is in front of the board. They have all of the material you sent.

Miller: Requests that she be allowed to go through the packet information with the board.

**Soutar:** Yes, you have three minutes to make your presentation.

Miller: To variance request item number 3 which we believe was tabled to continue discussion on at the 9-13-18 ZBA meeting, we still respectfully request that you deny this variance request. At the 8-9-18 meeting, the Goulas stated that they had to do something with this room due to safety because of a 4 foot drop off and no room to add steps in front of the structure. The home floor plans they submitted to Christina showed Future Screen Porch, Provide Rail 36" Above Finished Floor. They could have followed through in the future with this plan and it would have properly addressed the safety concerns they stated. Previously this area they enclosed without a permit was an open patio with a deck over it that was not impervious to water. It had no walls, windows, doors, ceiling or ceiling fans, and no outdoor speakers. It also had no insulation and siding on the exterior wall of the patio which is now the interior wall of the porch enclosure.

**Soutar:** Let me stop you as the material you are reading is already part of the record that the board has received. I thought you were going to explain some of the pictures.

Miller: I would love to explain the pictures. (These photos appear on the Peninsula Township website under the ZBA meeting of September 13, 2018 as Additional Packet). The first and second picture shows the patio in June, 2017 and there are no windows or doors. Picture 3 shows the upper deck above the patio and there are spaces between the boards which would make the patio not impervious to water. The next picture still looks the same as when they cleared the property on 10-8-17. Then is the floor plan that shows a future screen porch with a 36" railing above the finished floor. It does not show windows or doors. The picture they showed you that the lawyer referred to was to show you they did put in new support posts and they did cantilever it over the top of the patio. Whether it matters to the board or not, I do not know, but they did cantilever it over the existing cement slab. The next picture shows the new walls, windows, doors, and insulation house wrap. The photo

dates 6-14-18 and 7-7-18 shows Marvin Integrity insulated windows, which are the highest rated insulating factor windows on the market, insulated house wrap, a porch wall, and a drip system for the new porch roof so they could put in a ceiling. The picture dated 7-8-18 shows the north outside corner of the home and you can see the 2x4s in front of the pre-existing cement slab that was added to the front of it. I do not know if this matters to you or not, but it extends beyond the original structure. The picture dated 7-12-18 shows the ceiling that was added above the slab, which was not there before. Then there is the picture dated 8-9-18 that shows the completed new ceiling and roof, the painted interior wall siding, and an outside speaker for a sound system and 2 ceiling fans. None of this was there before. So my point in all of this is that we thought long and hard about this because if the board approves this, then maybe down the road we would enclose our deck. They are almost identical situations. We keep going back to, and I know it was a board from a long time ago, but if the rules matter and the laws matter, we were made to cut back our deck. So we are having a hard time understanding why we should not object as this is increasing the intensity of the use. They just had a huge party there with a bunch of cars and the parking was insane. They are already parking in front of a structure that they built that you do not want to talk about and it is blocking our view. With this intensity of use and with this year round porch they are going to be able to have more people and more vehicles overall and my mother-in-law cannot exit her driveway.

**Soutar:** What they do in the future is not the concern here tonight; is there anything else you would like to add regarding Item 3?

Miller: No.

**Soutar:** Is there anyone else that would like to speak against the request? Hearing none, I will give the applicants an opportunity for rebuttal. You have 2 minutes, please.

Mike Goulas, 9898 Center Rd.

First, we are not extending the footprint at all. As Chad (builder) will attest we have lost square footage by bringing in the deck a bit. There is no insulation.

Chad Smith 5784 Benton Rd. Williamsburg, Michigan

The photograph shows that we are less encroaching. The only thing that extends beyond that slab is drain spouts that would be covered up if we are allowed to go ahead with the project. There is no insulation; there is a vapor barrier.

**Cowall:** The stop work order means nothing happens. Is there work still going on out there?

**Deeren:** It means that the work that was done on this portion of the house had to stop.

**Cowall:** So if there was work going on, like the installation of a ceiling fan or a speaker is that a violation of the stop work order?

**Deeren:** None of those items were there when I went out there. Yes, this is a violation.

Whitney D. Goulas, 9898 Center Rd

Let me explain this. Gordon (Hayward) came out when we were trying to get occupancy and we already had open wiring in the ceiling. We were under the stop work order, but Gordon said just to put something there so we could pass the inspection so we could occupy the

house. We then just put some boards up to protect the property. No other work was done.

**Cowall:** Did you get this in writing from Gordon?

Smith: No, this was verbal.

Goulas: Just to speak to our character, the party was for my son's baptism. We are not the people we have been accused of in this issue. We are good people.

**Soutar:** Brings it back to the board and requests that each board member ask any questions they might have for the applicant.

**Serocki:** I have a question for Deeren. So when you received the site plan, it said a screened in porch and it said future so it was not discussed as to what type of porch?

**Deeren:** This whole structure did not have a permit to be built. That is why I put a stop work order on it. Once I realized that construction was going on and this was not permitted, I did issue some permits for other items that they wanted to do.

**Soutar:** Requests that Meihn make any comments he has at this time.

**Meihn:** No, the only thing you need to be concerned about and you have to make the decision is when you have a non-conforming use you have to look at the issue and determine whether or not there is increased intensity of that non-conforming use. The law is very clear that you cannot increase the intensity of a non-conforming use. You have to decide what is being done to increase that intensity. And I would recommend that you make a record of that as to why you think it is or why you think it is not.

**Soutar:** Brings it back to the board for comments.

**Cowall:** That issue of intensity is the swing point for me. What it comes down to is the physical construction of that space. I would say that once you are protected from rain, you could use that area more than you could use it when it was just a deck. Windows, electricity, and doors all indicate more intensity. What I struggle with is what constitutes a 3 season room. Not really understanding how to permanently codify a deck to insure that the use never changes going down the road. I am not a builder or an engineer, but what is going to prevent this owner or any other owner to increase the intensity at some future date? The confusion that has lead us here is the not pulling of the required permits.

**Deeren:** I know that we keep referring to it as a 3 season room, but by all rights with double paned windows and the walls, I would say it is a 4 season area. The item to think about is how it has changed from what it was. The porch may have been open and considered a 3 season porch, but what we have now is clearly not that.

**Soutar** asks Dave Sanger, who was the former compliance officer for the Peninsula Township to speak on enforcement. Sanger has also been appointed to the Peninsula Township Board.

Dave Sanger 1699 Braemar

I am still the enforcement officer as well as a new member of the Peninsula Township Board. I became involved with this case back in June when I was asked to investigate a violation. There is nothing I can add to what you have heard tonight and what has been said around this table. Based upon my experience with the Zoning Board and my work with the Zoning Commission over the last two years, I believe you are on the right track regarding

the issue of intensity. Do you see an intensity of use or not? If the intensity of use at this dwelling is going to increase by your decision here tonight than I believe this is a violation of the ordinance and would require a variance.

**Serocki:** I am glad we finally have a floor plan of what was being done. It does say future screened in porch in the plan. Once the windows were installed, to me this does allow for an intensity of use.

**McBride:** I agree. It is clear to me that this is a change in the intensity of use.

**Soutar:** As I have noted in the previous minutes, there is now an impermeable roof over the porch, which makes it at least a 2 season porch. Additionally, we do not think of a room with ceiling fans to be a 3 season; this activity would be for summer and winter and makes it a 4 season porch. This is not at the same level of activity as it was before.

**Cowall:** I have a question for staff. In terms of intensity of use if this applicant or any future applicant were on a lot that required this source of attention, what sort of guidance do we have in terms of how to deal with equalizing intensity? If someone comes to you, what does it look like for equalizing intensity?

**Deeren:** One would have to come in and talk about intensity of use and it would require a variance.

**Meihn:** Intensity is intensity. There is no stick to it. There are ways around it through a variance. There are ways around safety issues. There are roads an applicant can go down to deal with this, but I do not feel you have this here.

**Action-motion** Cowall moves to deny Request No. 866 Item 3 for the pre-existing porch not to be enclosed based on the increased intensity of the present construction. Serocki seconded.

**Serocki:** Yes, and the reason is increased intensity and the plan shows a screened in porch.

**McBride:** Yes, because of the windows and screens and electricity and the ceiling.

**Soutar:** Yes, based upon the ceiling fans, insulated windows, intensity of construction and the impermeable roof overhead

**Cowall:** Yes, the intensity of the construction is definitely and different than the initial existing porch.

**PASSED UNAM**

Soutar: Thank you for coming before the board.

**Action- Motion** Cowall makes a motion that Wahl return and is seconded by Serocki.

Ayes: Cowall, Soutar, McBride, Serocki

**PASSED UNAM**

## 9. **New Business**

### **B. Request No. 869, Zoning R-1A**

Applicant: Tom Sanborn, Agent, 2891 Ishpeming Trail, Traverse City, MI 49686

Owner: Bluffs Association Inc., 2858 Ishpeming Trail, Traverse City, MI 49686

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

1. Requesting a variance of 35 feet from the required 60 foot setback from ordinary high water to allow for the construction of a 7 foot by 32 foot retaining wall
2. Requesting a variance from the required front yard setback of 30 feet to 14 feet to allow for the construction of a 7 foot by 32 foot retaining wall.

Parcel Code: #28-11-009-023-00

Tom Sanborn 2891 Ishpeming Trail

I am here tonight to stop a serious erosion problem since Bluff Rd. was redone. The problem we are having is with the 60 foot setback from the ordinary high water mark. We do have a rough building down there where boat equipment is kept that falls where they want us to keep the high water mark. We want to build a wall as close to it as we possibly can so that is why we are asking for this variance.

**Soutar:** Requests to hear from staff on this issue.

**Deeren:** I found that they were doing construction without a permit. I placed a cease and desist on the project. They came into the Peninsula Township to apply for a variance. They have two overlapping issues as they do not meet either the required 60 foot setback from the ordinary high water mark or the front yard setback of 30 feet. After the rain we went out and looked at it and there are substantial issues with erosion occurring. I can see why they want to do this. Because by definition it is a wall construction, it needs to go through zoning. That is why they are here tonight.

**Cowall:** Were there any other outstanding permits that were missed? Does DEQ get involved with something like this, county soil erosion?

**Deeren:** I do not believe they have a County soil erosion permit.

Sanborn: Yes, we do.

Adam Hyde: 3966 Whisper Knoll Drive

I am the landscape architect on this project. We have soil erosion through Grand Traverse County. I have emails from the Army Corp of Engineers and the DEQ stating that we have waivers from these organizations.

Dan Wolf 2891 Ishpeming Trail

This project also deals with some safety issues coming off of Bluff Road. There is a step down area to the beach that has not become impassable, but is difficult to walk down. Part of our agreement with Hyde is to build that out. There is a broader erosion problem on the road and we have engineering input from the road department and from Elmer's who built the road. Previously we had a lot of pervious rock along there and Elmer's did such a great job in making it look nice, but now we really have an increased water flow coming off the road there.

Hyde: The block that we are using for the wall is an engineered block and you put it into the hill and that stops any soil. The reason we went with the block is because the wall needs to be 7 feet. If we were putting in a 4 foot wall, we could have used rock, but at 7 feet you start to lose structural integrity. That is why we went with the engineered block.

**Soutar:** I would like to mention while doing my research regarding who should hear a portion of a case that has been tabled, I came across some additional information that I believe is

important for us. When we go out on a site visit according to the Michigan Planning Association, we should go out individually with the Zoning Administrator. While that takes more of the Zoning Administrator's time, it means that we have no active contact with each other.

**Soutar:** Are there any members of the audience that would like to speak in favor of this request? Hearing none, I would ask if there is anyone who would like to speak against this request. Hearing none, I will bring it back to the board for discussion.

**Cowall:** My biggest problem with this is the permitting process was missed and they would have had to appear before us anyway. It is a big drop and steep drop off Bluff Rd. With the types of storms we have been seeing, I see an active need for this.

**Serocki:** When this wall is completed, it will be 7 feet high and there is still quite a distance between the road and the wall and material will still be coming down. Do you know what they are doing about that?

Hyde: The back of the wall will be backfilled. Once the wall is completed looking back from the beach house, all you will see is the wall. Behind the wall will be backfill and there will be 18" of crushed stone. At the bottom of the wall is a drain that would remove any water that may build up.

**McBride:** The architecture slope of the property we are talking about makes sense for this action.

**Cowall:** If you could get the word out to your neighbors to make sure that the Peninsula Township is involved in future projects such as this.

**Action Motion** Cowall moves that Request N. 869 be approved due to the extreme topography. Serocki seconds.

Cowall amends the motion to include that all of the basic conditions have been met. Serocki seconds.

Ayes: Cowall, Soutar, McBride, Serocki, Wahl

**PASSED UNAM**

#### **Approval of Minutes from August 9, 2018 Meeting:**

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

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

**Passed Unam**

#### **10. Citizen Comments**

Lorinda Miller 5140 Aintree Rd. Rochester, Mi.

I was not sure when to approach the board; whether it was under Old Business, Citizen Comments or what. Your minutes are wrong and it is about the location of the fences. This also came up tonight and I have the pictures to prove it. These are the pictures that I brought to you in the August meeting and that is why the minutes are wrong. I am trying to

get this corrected as I do not know if this impacts the next question I have. I thought that this error would be corrected tonight.

**Cowall:** Procedurally, public comments are a one way street and we are not to respond to you or turn it into a conversation, so please go ahead and make your comments.

Miller: We brought pictures last month that this is the south border, our northern property and the Goulas' southern property of the pre-existing cement slab wall. There was never a fence there. There are no holes, no fence posts, no nothing in this photo. This is the picture of the east wall, which there was a chain link fence. Everybody kept talking about it and the Goulas' kept saying they were just replacing an existing fence that was already there. There was never a fence on the south. We put on record that we do not want a fence there because it is blocking the view, not because we want to be mean. It is just that we cannot see and my 85 year old mother-in-law cannot see to get out of her driveway and turn south on Center Rd. There were 4 40 foot cedars there that were on our property and the Goulas cut them down. I know that you cannot do anything about. The trees were a good 10 feet back from the road and they did not come all the way here. The trees were not blocking the view of the road.

**Soutar:** Ok. Let's stop right here. I see what you are saying, I accept what you are saying, and you are correct.

Miller: It will be stated incorrectly again in the minutes tonight. There was a fence on the east side and not on the south.

**Wahl:** If someone states something that is incorrect, the minutes reflect what was said in the meeting. It is not that the minutes are wrong; the information stated was incorrect.

Miller: I think that the board made a decision to give them a fence because you believed there was one there and we do not want to have a fence there as it is blocking our view. You have an ordinance that says if a neighbor does not agree that it cannot be 3 feet from the edge of the property line and in the front is 7", if the middle is 15-22, and the back is 32, so I do not know what the Millers do to try and correct a safety issue for our egress and exit from our property if the board went ahead and gave them a fence. The ordinance says they cannot have one unless we agree and we do not agree. I am really at a loss on how to correct this. It's a safety issue for us. We have been portrayed so poorly. I don't know how to undo all of this; I don't know what to do.

**Cowall:** I will be honest with you in that I do not know if that would completely transform the conversation that we had about this. I had it flipped around in my head too, that there was fence on the south and not on the east. The decision by the board was to go ahead and put transparent fences on both spots.

Miller: That is the part that we were lead to believe would be corrected at tonight's meeting. Is my only source of recourse to appeal the board's decision?

Soutar: You are going to have to go to county court on this. Hopefully, Deeren will be able to figure something out to address the safety issues regarding the Center Rd. access.

**11. Board Comments**

**Wahl:** The Peninsula Township and the Planning Commission have a joint meeting.

**Serocki:** From the Planning Commission, we did receive the revised third draft from McKenna and we are reviewing it to make sure that the changes were made.

**Deeren:** Asked how many people were still interested in getting individual copies of the Planning and Zoning News. The Peninsula Township is paying for 19 copies at \$390 per year. Members of the Zoning Board just want to have a copy available to them. Deeren will have a copy at the Peninsula Township and will cancel all of the individual copies.

**12. Adjournment** Cowall makes a motion to adjourn and is seconded by Wahl. Meeting ends at 8:35 p.m.

Recording Secretary  
Lola Jackson

