

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

13235 Center Road  
Traverse City, MI 49686

October 12, 2017

7:00 p.m.

**Minutes**

1. **Call to Order** by Rick Vida
2. **Pledge**
3. **Roll Call of Attendance** Present: Vida, Cowall, Soutar, Serocki, Wahl Also present: Christina Deeren, Zoning Administrator
4. **Approval of Agenda** Moved by Cowall; seconded by Wahl **Passed Unam**
5. **Brief Citizen Comments** None
6. **Conflict of Interest** None
7. **Meeting Procedure**

Vida reviewed the meeting procedure. He stated that the Zoning Administrator, Christina Deeren, would present the applicant's request. The audience will be invited to present their views on the Applicant's request—both pro and con. The Applicant has the right to rebut any negative viewpoints. Anyone wishing to speak please go to the podium and state your name and address. After public input, the meeting will be closed and the hearing will go back to the Board for deliberation and a decision.

8. **Scheduled Public Hearing**

Zoning Administrator, Christina Deeren, outlined the request of Paul and Rachelle Zajciw, as follows.

**A. Request No. 862, Zoning R-1B, (Parcel Code No. 28-11-324-005-30)**

Applicant: Paul & Rachelle Zajciw, 44119 Balmoral Court, Sterling Heights, MI 48314

Owner: Paul & Rachelle Zajciw, 44119 Balmoral Court, Sterling Heights, MI 48314

Property Address: 8803 Peninsula Dr., Traverse City, MI 49686

Requests: (1) a variance of **39** feet from the required 60 feet Ordinary High Water Mark setback for a previously constructed deck and stair well was granted on July 27, 1988. Requesting that the variance be expanded to **35** feet from the required 60 feet Ordinary High Water Mark setback for a newly constructed deck and stairwell, which was constructed without obtaining the proper permits. Also requested is expansion of the non-conforming deck from 590 square feet to 914 square feet. They are represented by their contractor, Michael Ferraro.

Michael Farraro, 4820 Lands End Street, Traverse City, MI, admitted that it was his negligence on the zoning and permitting process that has caused his clients to be non-compliant. He stated the merits of the variance request. First, this was strictly a health and safety issue. The owners were not aware of any structural deficiencies when they purchased the home a few years back. The deck and housing materials used in construction are "drastically inferior". As a result, rotting, carpenter ants, and water damage was seen in the home and deck. Farraro predicted that the deck would not be standing in another year without some

intervention. Second a structural engineer was brought in and he confirmed that because of the decay and water damage, the deck presented a hazard for further use. As an aside, the house also required the removal of all have the siding and structural components and had to be re-sheeted/sided because of the water damage. A variance for the deck was obtained in 2005, and it protruded out from the house about ten feet, but was irregular in shape and from a practical standpoint, not very function. The present deck does protrude out from the house approximately 10 feet with a small area extending out 14 feet. That is the area that the zoning administrator spoke about. There is about 300 sq. ft. additional deck area that we produced by squaring off the irregularities in the existing deck's shape—making it more rectangular. We did delete a portion of the deck that served as an exit from a slider door, but the door was removed and a window placed in the opening, so the deck became functionally obsolete and was removed. Third, in discussions with neighbors, his clients did not hear any negative feedback about the deck change. Fourth, the existing deck before remodeling, was not handicapped accessible, and our work will allow the stairs to be widened to meet this standard.

Again, there was no intent to deceive the township, but was an attempt to make the deck more functional on our part. The new deck is less obtrusive and it fits with the lot and neighborhood.

**Vida or Cowall:** How did the design actually progress from the original structure to what is there now? Ferraro said he provided illustrations of what was there before in terms of its irregular shape and what is there now after the construction, a more rectangular area off of their eating area in the house.

**Vida or Cowall:** Was the new design a compilation of effort between you and the new owners? Ferraro-yes.

**Someone:** Is the stair area part of the new design? Ferraro-yes. Here's another question: was there another variance granted in 2005? Deeren states that the records on this house are incomplete; a variance was granted in 1988, but the deck appears to be rebuilt in 2005 without a building permit or variance. The data came from the assessor's records in 2005 as to the square footage of the deck and its shape. The land use permit was for 450 square feet in 1988; and the application for building permit was for 450 sq. ft. The variance from the High Water Mark (HWM) in 1988 was 39 feet; with the new deck 35 feet away from the HWM.

**Serocki** asked about amount (%) of the lot that is built; Deeren thought the house is within the area permitted for building.

**Vida:** it is always difficult to work with situations that are nonconforming in terms of variances.

**Serocki:** is the house itself within the 60-foot setback to the HWM. Deeren said yes because it was constructed before zoning.

Deeren observed that the post the deck was placed on was modified as well. Ferraro said the columns were placed in concrete, not on pads.

**Vida:** any other comments from the Board or the public? Deeren said she had a couple of pieces of correspondence on the permit. They were from: Ms. Knoll (who did not support), Ms. Peters (who did not support).

**Vida:** asked the builder what would be involved in building a deck that was compatible to the original deck. Ferraro said he would have to demolish the new deck and start over.

**Vida:** can you deny a variance and still allow the deck to stay? Deeren said no.

**Soutar:** stated that we are looking at 2 different variances here. One has to do with the HWM and the other with sq. footage of the deck. **Someone** said that you are changing the area of the built environment. **Someone** else said that the deck is cantilevered so the built environment is not changed.

**Cowall** spoke that this deck is part of a non-conforming structure, with a history of non-necessity. Is the deck so necessary to the property to justify the failure to get a permit or to grant a variance to the ordinance? He cannot justify the variance. **Serocki** states she cannot justify going further into non-conforming status; she cannot see doing this. **Soutar** pointed out the variance in sq. footage in 1988 versus today's deck area is very close; furthermore, the currently deck setback from HWM may be met with some creative redesign to match the 1988 variances. Cowall—this represents two failures to meet the original variances for a non-conforming deck on a structure built in 1985.

**Vida:** are we ready to call for a motion?

**Soutar:** I move that we approve the variance of 39 feet (21 feet from the HWM) for the maximum forward extent of the deck from the house as approved in 1988, and that we approve the original 590 square foot variance on the deck's surface to conform to the original variance of 1988, as being 2 parameters to be met to approve this variance. **Serocki:** shouldn't the motion reflect the variance being requested? **Cowall:** agrees with Serocki. **Wahl:** suggested that if the motion is denied for a variance, that the variance would go back to the 1988 variance and the client could apply for a new permit, with a variance.

**Soutar:** I move that we deny the variance for Parcel Code No. 28-11-324-005-30 and Request #862; Cowall seconded.

The Board discussed whether a particular reason should be identified for denial of the variance. Ultimately, it was decided that the variance had to meet all of the five conditions for granting the variance, and it did not.

**Role Call vote:**

**Passed Unam**

## 9. Approval of Minutes

- A. July 13, 2017 Regular Meeting (Tabled by Motion for Approval)
- B. August 10, 2017 Regular Meeting

**Wahl and Serocki** discussed the conditions that surrounded the approval of the minutes at the last meeting that related to errors in the transcripts for the July 13 meeting. It is unclear whether changes and approval of the minutes at this point can take place. (Clarification from the clerk should be sought).

**Serocki** offered a change in the August 10 minutes that she would like to see corrected on page 3, the 3<sup>rd</sup> line—this is an awkward sentence and ambiguous. She also identified several other grammatical errors in the transcript for that meeting. (The secretary of the ZBA should make these corrections according to this CD).

Motion to approve minutes of August 10, 2017 as amended **Wahl/Serocki**. Approved by Serocki, Vida, Cowall, and Wahl. Soutar was not at this meeting so he did not vote.

## 10. New Business

- A. Planning Commission Report (**Serocki**) – Planning commission is in its final stages of revising the ordinance language.
- B. **Cowall**—other new business. Deeren reported that a new attorney is going to represent us at the next ZBA meeting, relating to the Scofield decision, which called for filling in a flood plain.

11. **Public Comments** Dave Sanger updated the ZBA on code enforcement issues in the Township. There are 6 cases right now that deal with non-permitted construction activities, 3 with beach violations, and hundreds of sign violations. We need to do a better job with educating our citizens.

12. **Board Comments** None

13. **Adjournment**

*Peninsula Township has several portable hearing devices available for audience members. If you would like to use one, please ask the Clerk.*