

**Peninsula Township
Zoning Board of Appeals
October 13, 2016**

Meeting called to Order at 7:00 PM

Present: **Soutar** –Chair; **Witkop**; **Elliott**-Alternate; **Wunsch**-Alternate. Also present were *Claire Herman*, Zoning & Planning; *Peter Wendling*, Township Attorney and *Mary Ann Abbott*, Recording Secretary.
Absent: **Vida**-Regular Chair (excused); Cowall (excused)

Approval of Agenda

MOTION: Witkop/Elliott to approve agenda

PASSED UNAN

Conflict of Interest

None

Communication Received

None

Public Input

None

Scheduled Public Hearings

A. Request No. 853, Zoning R-1C (adjourned from September 8, 2016)

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 22 feet from the 30 foot rear yard setback requirement to allow for the construction of a 720 square foot attached garage; and (2) a variance of up to 6 feet from the 15 foot side yard setback requirement to allow for the construction of a 720 square foot attached garage.

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

***Applicant Requests No. 853 be adjourned to Thursday, November 10, 2016 at 7:00pm.*

Herman Applicant wishes the request to be adjourned until November 10, 2016 when a full board would be present

MOTION: Witkop/Wunsch to adjourn Request No. 853 to November 10, 2016.

PASSED UNAN

B. Request No. 857, Zoning R-1A & A-1

Applicant: Jessica V. Stroud, 607 W. Orchard Dr., Traverse City, MI 49686

Owner: Kramer Old Mission, LLC, 33 West Monroe St. Ste. 1900, Traverse City, MI 49685

Property Address: 17865 Whispering Trail, Traverse City, MI 49686

Request: (1) a variance to eliminate the requirement under Section 7.10.11 of the Zoning Ordinance that approximately two tenths of a mile of Whispering Trail be improved in terms of grade, roadbed, and shoulder, and paving requirements. The variance requested is for the construction of an addition to a single family residence.

Parcel Code No. 28-11-104-003-00

Herman states that the progress of the Planning Commission and Zoning Ordinance Rewrite continues. There are plans to address the private road standards.

Public Hearing opens at 7:10 PM

Gordon Hayward, 17777 Shitake Lane supports the request to grant the variance.

No comments in opposition. Public Hearing closes at 7:12 PM

Discussion by the Board and the Applicants representative resulted in the following Findings of Fact and Motion.

Peninsula Township Planning & Zoning Department
FINDINGS OF FACT

ZBA Request #857 – 17865 Whispering Trail
October 13, 2016

DECISION AND ORDER

Applicant: Jessica V. Stroud, 607 W. Orchard Dr., Traverse City, MI 49686

**Hearing
Date:** October 13, 2016

PROPERTY DESCRIPTION

The property of 17865 Whispering Trail, Traverse City, MI 49686, Parcel No. 28-11-104-003-00 herein after referred to as the “property”.

APPLICATION

Request: (1) a variance to eliminate the requirement under Section 7.10.11 of the Zoning Ordinance that approximately two tenths of a mile of Whispering Trail be improved in terms of grade, roadbed, and shoulder, and paving requirements. The variance requested is for the construction of an addition to a single family residence.

The Board having considered the Application, a public hearing having been held on October 13, 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 five (5) 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 dual zoned Rural & Hillside (R-1A) and Agricultural (A-1). (Exhibits 1, 2)
2. The Board finds that the proposed residential addition is located on the portion of the property that is zoned Rural & Hillside (R-1A). (Exhibits 1, 2, 5)
3. The Board finds that the proposed single family residence meets all applicable zoning standards, including setbacks, lot coverage, and height. (Exhibits 2, 3, 4)
4. The Board finds that Section 7.10.11 Existing Non-Conforming Frontage Roads requires that existing frontage roads are improved in terms of grade, roadbed, shoulder, and pavement requirements, and prior to the issuance of a Land Use Permit. (Exhibit 2)
5. The Board finds that the applicant requests a variance to eliminate the requirement under Section 7.10.11 of the Zoning Ordinance that approximately two tenths of a mile of Whispering Trail be improved in terms of grade, roadbed, and shoulder, and paving requirements. The variance requested is for the construction of an addition to a single family residence. (Exhibit 2).

MOTION: Wunsch/Witkop to approve the general findings of fact.

MOTION PASSED UNAN

Variance Request #1 A variance to eliminate the requirement under Section 7.10.11 of the Zoning Ordinance that approximately two tenths of a mile of Whispering Trail be improved in terms of grade, roadbed, and shoulder, and paving requirements. The variance requested is for the construction of an addition to a single family residence.

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 applicable portion of the property is zoned Rural & Hillside (R-1A). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1A zoning district. (Exhibits 1, 2)
- b. The Board finds that Whispering Trail was established prior to the effective date of Section 7.10 Road Standards of the Zoning Ordinance. (Exhibit 2, 5)
- c. The Board finds that the proposed structure is an addition to a single family residence which complies with the uses allowed in the R-1A zoning district. The Board further finds that the proposed structure complies with all applicable zoning standards. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 4.1.3, a Land Use Permit is required to construct a structure of greater than twenty-five square feet. The Board further finds that according to Section 7.10.11 existing non-conforming frontage roads must meet the grade, roadbed, shoulder, and paving requirements prior to the issuance of a Land Use Permit. (Exhibit 2)
- e. The Board finds that Whispering Trail is an existing legal non-conforming frontage road. The Board finds that given the property fronts Whispering Trail the ability to construct any structure is prohibited unless the frontage road is brought to Peninsula Township Zoning Ordinance standard or a variance granted. As such the Board finds that the requested variance is necessary for the owner to use the property for a permitted purpose. (Exhibit 2, 5)

This standard HAS been met.

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

This standard HAS been met.

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 applicable portion of the property is zoned Rural & Hillside (R-1A). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1A zoning district. (Exhibits 1, 2)
- b. The Board finds that the construction of the proposed structure will result in residential use. (Exhibits 3, 4)

This standard HAS been met.

4. That the variance will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicable portion of the property is zoned Rural & Hillside (R-1A). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1A zoning district. (Exhibits 1, 2)
- b. The Board finds that Whispering Trail was established prior to the effective date of Section 7.10 Road Standards of the Zoning Ordinance. (Exhibit 2)
- c. The Board finds that the proposed structure is an addition to a single family residence which complies with the uses allowed in the R-1A zoning district. The Board further finds that the proposed structure complies with all applicable zoning standards. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 4.1.3 a Land Use Permit is required to construct a structure of greater than twenty-five square feet. The Board further finds that according to Section 7.10.11 existing non-conforming frontage roads must meet the grade, roadbed, shoulder, and paving requirements prior to the issuance of a Land Use Permit. (Exhibit 2)
- e. The Board finds that Whispering Trail is an existing legal non-conforming frontage road. The Board finds that given the property fronts Whispering Trail the ability to construct any structure is prohibited unless the frontage road is brought to Peninsula Township Zoning Ordinance standard or a variance granted. As such the Board finds that the requested variance is necessary for the owner to use the property for a permitted purpose. (Exhibit 2)

This standard HAS been met.

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

This standard HAS been met.

- 6. That the variance shall not permit the establishment within a district of any use which is not permitted by right, or any use for which a conditional use or temporary use permit is required.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicable portion of the property is zoned Rural & Hillside (R-1A). According to Section 6.2.2(2)(a) a single family residence is a use by right in the R-1A zoning district. (Exhibits 1, 2)
- b. The Board finds that the construction of the proposed structure will result in residential use. (Exhibits 3, 4)

This standard HAS been met.

VARIANCE REQUEST # 1 MOTION TO APPROVE

MOTION: Witkop/Elliott all the basic conditions have been met based on the Findings of Fact and to approve Variance Request #857.

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

MOTION PASSED UNAN

The Peninsula Township Board of Appeals has **APPROVED** your request for a variance to eliminate the requirement under Section 7.10.11 of the Zoning Ordinance that approximately two tenths of a mile of Whispering Trail be improved in terms of grade, roadbed, and shoulder, and paving requirements. The variance requested is for the construction of an addition to a single family residence.

DECISION

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

A. September 8, 2016 Regular Meeting

Address on bottom of page 1 should read Daniel and Margaret Casey, ~~702~~ 7002 Peninsula

MOTION: Witkop/Wunsch to approve Minutes as amended.

PASSED UNAN

New Business

Township Board Report (Witkop)

The Town Board is working on a lot of things but the most pertinent to the Zoning Board is the Zoning Ordinance rewrite, which is mostly the Planning Commission at this point.

Planning Commission Report (Wunsch)

No major changes since the last report.

MOTION: Elliott/Witkop to adjourn at 7:17 PM.

Respectfully submitted by Mary Ann Abbott, Recording Secretary