

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

13235 Center Road  
Traverse City, MI 49686  
November 8, 2018  
7:00 p.m.

1. **Call to Order** Vida, Chair called the meeting to order at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Vida, Chair, McBride, Wahl, Soutar, Dolton (new member), Deeren, Zoning Administrator.  
Serocki and Cowall have left the board and were thanked for their service. The Board of Trustees have authorized that a stenographer be present at all ZBA Board Meetings.
4. **Approval of Agenda** Vida moves that the Approval of the Minutes be moved after the last case has been heard. Vida requests that the Introduction of New Members and Officer Appointments be moved after Approval of the Minutes. Deeren requests a clarification of the motion for the Jensen liquor license Case No. 865 that was approved in June, 2018. The class needs to be included in the motion. The Board agrees to put this before new requests.
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None
7. **Approval of Minutes from September 13, 2018** Moved
8. **Business**
  - A. **Introduction of New Members and Officer Appointments** Moved

**Case No 865, Old Mission Inn Application for Liquor License**

The Jensen's owners of the Old Mission Inn needs a Class C designation included with the grandfather clause motion from June, 2018.

**Action-Motion** Soutar moves to approve the liquor license for the Old Mission Inn under the grandfather clause and that this is to be a Class C liquor license. Vida seconds

Ayes- McBride, Vida, Soutar, Dolton

Nays-Wahl

**B. Request No. 870, Zoning R-1B**

Applicant: Pen Drive Properties LLC – Eric Grost, 1046 Quaker Valley Dr., Traverse City, MI 49686

Owner: Pen Drive Properties LLC – Eric Grost, 1046 Quaker Valley Dr., Traverse City, MI 49686

Property Address: 11136 Peninsula Drive, Traverse City, MI 49686

1. Requesting a variance of 15 feet from the required 35 feet setback from ordinary high water to allow for the construction of a 10 foot by 20 foot deck; and
2. Requesting a variance from the required front yard setback of 30 feet to 0 feet to allow for the construction of a 10 foot by 20 foot deck.

Parcel Code: #28-11-005-009-02

**Deeren:** This is a request after the fact. A deck of 10' by 28' is now in place.

Eric Grost 1046 Quaker Valley Drive, Traverse City, MI 4968

A structure was built to transit in a safe method to the beach. There had been a house across the street previously and if the driveway was extended, it would be in the exact place where we built the stairs. I decided this should be a solid but temporary structure; meaning we did not remove any dirt nor add any dirt in the construction. All of the work was done by hand and no equipment was used. There were no permanent concrete footings and no concrete was used. So the structure can all be removed, which I hope we do not have to do and that is why we are here. I did connect with Deeren, the Zoning Board Administrator early in the process and there seemed to be a lot of activity at the Township. Unfortunately, I never did connect with the Zoning Office. My contractor called me on a Thursday and said the deck could be finished in several days. Five workers showed up the next day and the deck was completed in two days. The last 3 pictures I have presented are decks within one mile of mine. Sanger, Code Enforcement Officer for Peninsula Township, issued Violations of Peninsula Township Zoning Ordinance in a letter dated July 20, 2018 and green tagged the project. I was able to talk with Sanger about what was right and wrong with the process. I was also able to have several conversations with Deeren since then. I did obtain a soil erosion permit from Grand Traverse County. Sanger suggested that I talk with the Grand Traverse Road Commission to make sure the stairs were set back far enough away from the road. When we get to the application itself, it is clear I do not have a setback from the ordinary high water mark. There is not a setback from the roadway and these facts are true. On the other hand, there are setbacks from both side yards in excess of 90' and this gives plenty of latitude. The coverage percentage in the way that I calculate it is well below the required 10% and is actually closer to 2%. It is a small deck on a larger beach, which is what that number says. We placed the deck where I believe, although the property has not been surveyed, you can see that it is sitting above the 594 foot level, so the deck is higher than the water. As we went through the application we do believe that there was shoreline erosion in our area that over time has caused a situation where the beach has clearly eroded in this particular section and it is something that has created a hardship for us and is something that has occurred outside of our control. We did not contribute to it and it is something that has been happening over time. Thank you for your time. I do ask that you grant the variances due to the erosion and take into consideration the low level of coverage that is involved here and the 90' side setbacks.

**Vida:** The first question that needs to be asked is if the Zoning Administrator considers this a permanent structure.

**Deeren:** While there is no foundation, the way the deck is attached to the staircase makes this a permanent structure.

**Vida:** Did you ever consider using sections of dock?

**Grost:** Yes I did sir. When we had this built, we had 4 10'x 5' dock sections laying side by side. The contractor said just so you know I am going to get the 20' boards and lay them across the top. If you want to, we can cut them and they can very easily be turned into dock. The green stickers appeared stating to avoid doing any additional work and we did not cut the boards.

**Vida:** The problem the Zoning Board faces is when we are being asked to rule on a case after the fact. If we start granting exceptions in variance laws, then why do we have zoning laws?

**Deeren:** That area is very shallow and there is no area on that beach that this structure would not require a variance. What makes something temporary is that the docks are in and out. They are a seasonal thing and the docks go in and they come out. I would say this is a permanent structure.

**McBride:** We are not questioning the violations here then.

**Deeren:** They could have put the stairs in without a permit.

**Wahl:** I have a hard time with items that are after the fact and do not see the conditions as being met.

**Denlon Dolton:** The start of the stairway is clearly within the 33' required boundary, so why is the deck not treated the same way?

**Deeren:** The first set back is 33' from the center of the road and the second set back is 30' (which is required by the zoning) from the center of the road making a total of 63' and that would put them out into the water.

**Grost:** I do not like to do things after the fact and on June 5, 2018 I emailed Deeren, which is attached in your packet. "I plan to put a stairway from near the Peninsula Drive Road shoulder to the beach with a deck at beach level away from the water's edge. The entire project will be performed by a contractor who will not use any concrete or permanent installation techniques. I am told that the entire thing can be taken down in pieces and stored if necessary. Some Peninsula Township residents have told me that in this situation I may not need a permit since it is not permanent construction, but I'm not sure so that is my question. If a permit is necessary, can I secure one with this information and the attached sketch?"

If this is done before the request, would this be permitted. I did not hear back and I have a contractor who is booked for the entire summer able to fit this in. I took the liberty and had this done. I'm sorry.

**Vida:** Are there any comments from the public in favor from the applicant-None

**Vida:** Is there anyone wishing to speak against the applicant's request?

**Deeren:** We do have a letter from The Watershed Center written by Heather Smith and gives Grost a copy to read.

**Grost:** In response to this letter, the boards do have ¼" slots. We could look into the suggested vegetated buffer.

**Vida:** Closes the public portion of the meeting and brings it back to the Board.

**Soutar:** Would like to express his appreciation that the applicant is working to do what is right; If he cut this back to dock sections, this is one possible option he would have. The main problem for me is the water side and not the road side. It is important that it goes above the

flood plain line. You do have a right to have a deck on the water side and if you have an erosion problem, it is within your right to address that in a way the law allows. A deck is not the proper way to deal with an erosion problem. The deck is not acceptable as it is way too close to the ordinary high water line, let alone the flood plain line. One of things is you may have to cut those boards to make it a temporary structure. The one thing we absolutely want to have in this Township are structures will not be washed away. The neighbors' decks are not in compliance and whether they are grandfathered in or ignoring the law, they would not gain approval from this Board. We do not want to have structures that are affected by the change of the ordinary high water line coming onto the beach.

**Deeren:** There was a survey provided in the applicant's application that shows the ordinary high water line is between 583 and 584. They are above the ordinary high water mark. The ordinary line is 581.5.

**McBride:** The property is very narrow and understands this could be a hardship. We are here because we are to hold this to the Zoning Standards. When they wrote these, it does not seem that they intended to have a permanent structure on the beach. The numbers just don't work out.

**Wahl:** I also agree and see that there is a potential to turn this into an oval deck. I do wish that you would have waited until Deeren had responded and I do appreciate everything you have done to set this right.

**Vida:** The Board will now go through the 6 Basic Conditions that must be met.

Section 5.7.3 (1) BASIC CONDITIONS: The applicant must meet ALL of the following Basic Conditions.

1. That any variance from this Ordinance: a) 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.

McBride, Wahl, Vida, Soutar, ~~Donlen Dolton~~ **all agree** the condition 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.

McBride, Wahl, Vida, Soutar, ~~Donlen Dolton~~ **all agree condition has not been met.** This is based on the structure already being in place.

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.)

McBride, Wahl, Vida, Soutar, ~~Donlen Dolton~~ **all agree condition has not been met.** Because of the setback requirements this condition has not 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.

McBride, Wahl, Vida, Soutar, ~~Deeren~~ Dolton all agree condition has not been met. This is based on the violation of the ordinance.

5. That the variance will not cause adverse impacts on surrounding property, property values or the use and enjoyment of property in the neighborhood.

McBride, Vida, Soutar, ~~Deeren~~ Dolton agree condition has not been met. Wahl votes condition 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.

McBride, Wahl, Vida, Soutar, ~~Deeren~~ Dolton all agree condition has been met.

Vida: All 6 conditions must be met for us to proceed. Calls for a motion.

**Action-Motion** McBride makes a motion that Request No. 870 be denied with Wahl providing a second.

**Soutar:** I think we have the right to give them a lesser option. I think cutting these boards is one possible option. I think we can direct him that there is a lesser footprint possibility going to the water or there be a temporary docking without the contiguous units being formed together by these horizontal boards would be two ways of looking at the lesser of this. So I would like to deny it with a stipulation to look at this along those two lines.

**Vida:** There appears to be acceptable alternatives and this would be up to the Zoning Administrator to rule on those options and I would modify your motion

**Deeren:** Need to look at what the variance request is and we are either approving it or denying it. They do have some options to look at other things if this is not approved.

**Vida:** I remove my addition to your motion and we will take a roll call vote.

Roll call Vote: McBride, Wahl, Vida, ~~Deeren~~ Dolton agree to deny Request No. 870. Soutar votes no unless the motion includes a lesser approval option.

Grost: If you do put dock down, do you need a permit?

Deeren: It depends on how you adhere it to the ground, so that is something you are going to talk to me about.

### **C. Request No. 871, Zoning A-1 and R-1A**

Applicant: Kelly & Debra Miller, 10839 Bluff Rd., Traverse City, MI 49686

Owner: Kelly & Debra Miller, 10839 Bluff Rd., Traverse City, MI 49686

Property Address: 10839 Bluff Rd., Traverse City, MI 49686

1. Requesting a variance of 16 feet from the required 60 feet from ordinary high water in order to construct a 2 foot by 125 foot retaining wall; and
2. Requesting a variance to encroach in the road right-of-way setback of 2 feet from the required 33 foot setback to construct a 2 foot by 125 foot retaining wall on the westerly property line; and
3. Requesting a variance of 20 feet from the required 60 feet from ordinary high water in order to construct a 2 foot by 125 foot retaining wall; and
4. Requesting a variance to encroach in the road-right-of way setback of 30 feet from the required 33 foot setback.

Parcel Code: #28-11-009-025-30

Kelly Miller: 10839 Bluff Rd.

In your packet are 14 pictures, 2 different surveys, and a narrative. We are in a unique setting and this beach frontage is being compromised by the higher water, but more specifically is the erosion along Bluff Road. In 1986 the County Road Commission tossed concrete slabs over the side of Bluff Road. Those concrete slabs are unsafe and unsightly. We are trying to preserve what little section of the beach we do have with this wall and concrete pilings. I know we do not have 125'. On that frontage there we would soften the slope. We intend to use the existing concrete slabs, remove the concrete that has gone into the lake and move this back onto the land. We would put sodding soil on top of the concrete slabs to fill in the crevices that would exist between the slabs. We would end up with a DOT straw mat on top of that. I think it is in my pictures what our intention is. I do not know if we can get there. We think this would be better for the public, better for us, and the Peninsula. It is a dumping ground and it is certainly sad that this is there.

**Vida:** You certainly do not have much beach. I think that you owned the property when the concrete was dumped there.

Miller: This happened when we were living on the property. It was the slabs and the re-rod and the dust was coming up the bluff into our house that alerted my wife of this and she called me. If you remember there was a Holiday Inn that got torn down and that is where those slabs came from. And then it was just dumped on our property. We got the re-rod out of there after our dog had been down there and cut himself pretty badly. We think the wall will help the situation.

**Vida:** Did you ever contact the County regarding this?

Miller: Yes. I told the County Road Commission that the re-rod was dangerous. I gave them a pass with what they did, but was not happy in the way that they did it. I sent a letter stating that the re-rod was not safe for our 4 children as well as our dog. I sent another letter and with each letter they got more pointed. My final letter stated that this will be the letter that is read to the judge and jury. If one of my children or any person is impaled on re-rod, this will be on your shoulders. The County Road Commission did come out and cut the re-rod the next day. We will do what we can to shape that up; I do not think we will fix it up.

**Vida:** Questions from the Board?

**McBride:** Will you be planting vegetation.

Kelly: The trees work against us because as they grow we get the bending and then eventually

they do fall and the root ball takes more beach with them. It was suggested by the DOT to use soddy soil and a straw mat on top of that. I do not know if I mentioned it to the Road Commission, but I would suggest taking down some of those trees.

**Vida:** If this is approved by the Board, what other permits would be needed?

**Deeren:** Would need permits for Soil Erosion and the Road Commission.

Kelly: I already have those permits. I also have the DEQ and the Army Corp; I think that would be for the water.

**Wahl:** I would be concerned that cutting down some of the trees would lead to more erosion.

**Deeren:** The Road Commission did come and cut trees down when they did that expansion on Bluff Road.

Miller: Mostly they cut them on the other side.

**Vida:** Any other questions from the Board?

**Vida:** Any members of the public wishing to speak for the applicant? None.

**Vida:** Any member of the public wishing to speak against the applicant?

**Deeren:** A letter was written from The Watershed Center by Heather Smith stating that it is the job of the Peninsula to protect the land-water interface landward of the Ordinary High Water Mark (OHWM). " If the Board approves this variance, we suggest that the Board carefully examine proposed tree and vegetation removal and condition the variance on a native, deep-rooted vegetation restoration plan in the remaining setback area."

**Vida:** We will now close the public portion of the meeting and bring it back to the Board.

**Soutar:** It is clear they have a huge problem. To remove this concrete would cause the applicant a huge expense and it was caused by a county entity. I am willing to bend over backwards to try and help them solve this problem.

**Wahl:** I agree this is not the definition of a self-made problem.

**Deeren:** There is a lot of property they cannot use because this was put there without their consent.

**Vida:** The Board will now go through the 6 Basic Conditions that must be met.

Section 5.7.3 (1) BASIC CONDITIONS: The applicant must meet ALL of the following Basic Conditions.

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| McBride, Wahl, Vida, Soutar, ~~Donlen~~ Dolton all agree condition 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.

| McBride, Wahl, Vida, Soutar, ~~Donlen~~ Dolton all agree condition 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.)

McBride, Wahl, Vida, Soutar, ~~Denlen~~ Dolton all agree condition 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.

McBride, Wahl, Vida, Soutar, ~~Denlen~~ Dolton all agree condition 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.

McBride, Wahl, Vida, Soutar, ~~Denlen~~ Dolton all agree condition 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.

McBride, Wahl, Vida, Soutar, ~~Denlen~~ Dolton all agree condition has been met.

Soutar makes a motion that Request No. 871 with all four variances be approved with McBride providing a second.

Roll call Vote McBride, Wahl, Vida, Soutar, ~~Denlen~~ Dolton all vote to **approve Request No. 871.**

**Action-Motion** Wahl makes a motion that the Amended Agenda be approved retroactively. Soutar seconds.

McBride, Wahl, Vida, Soutar, ~~Denlen~~ Dolton all approve. **UNAM APPROVED**

Vida: I was not at the last meeting, so I really do not have any comments on the minutes. Wahl moves to approve the minutes from September 13, 2018 and Soutar seconds.

McBride, Wahl, Vida, Soutar, ~~Denlen~~ Dolton all approve. **UNAM APPROVED**

### **Introduction of New Members and Officer Appointments**

**Vida:** Submits his letter of retirement from the Board.

**Action-Motion** Vida makes a motion that Mr. Soutar becomes the chairman and Mr. Soutar will make his selection for a Vice Chair. McBride seconds. Soutar selects McBride to be Vice Chair.

McBride, Wahl, Vida, Soutar, ~~Denlon~~ Dolton all approve.

**UNAM APPROVED**

Deeren: A member of the Planning Commission will come over and be a part of the Zoning Appeals Board. I am not sure who that will be. I do not believe there will need to be a meeting in December.

**9. Citizen Comments**

Nancy Kelly Heller 3091 Blue Water Road wanted to know if a stenographer would be taking the minutes as referred to at the beginning of the meeting and would this replace the recording secretary?

**Wahl:** No, this just means that the meetings will be recorded in the same manner as now.

**10. Board Comments** None

**11. Adjournment** Wahl moves that the meeting be adjourned and Vida seconds. Meeting concludes at 8:13 p.m.

Lola Jackson  
Recording Secretary