

**PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS MEETING
Peninsula Township Conference Room
November 9, 2017
MINUTES (Draft)**

Call to Order by Rick Vida, Chair

Pledge of Allegiance

Roll call: Rick Vida, Chair, Souter, Serocki, Cowall, McBride. Also present: Gordon Hayward (Assistant Planner), Gordon Meihen, Attorney, Christina Deeren, Zoning Administrator. Citizens Peters, Heller.

Approve Agenda

Brief Citizen Comments for Items Not on the Agenda: Monnie Peters (1425 Neatawanta Rd.) asked if there would be an opportunity for the public to make comments during the meeting.

Conflict of interest NONE

Consent Agenda

Request No. 863, Zoning R-1C (Re-Hearing from Request No. 860)

Applicant: Tom & Ann Elizabeth Schofield, 3163 Holiday Village Rd., Traverse City, MI 49686
Owner: Ann Elizabeth Schofield, 3163 Holiday Village Rd., Traverse City, MI 49686
Property Address: 860 Birchwood Ave., Traverse City, MI 49686
Requests: 628.49 cubic yards of fill be placed over 14,456.41 square feet of the lot (25.8% of the total lot area) that is below the defined flood elevation. This amount of fill on the defined area results in an average fill depth of approximately 14 inches and elevates this area to 1 inch above the defined flood elevation.
Requesting approval to the standards of Section 7.4.7(5)(c).

Parcel Code No. 28-11-475-011-00

Speaker: Dusty Christenson 830 Cottageview Drive, Traverse City main representative for the applicant. Zoning board of appeals met October 26 and request was made for more information as to water issues to the south. We are prepared to address those concerns.

Concerns regarding ground water at 581ft and surface water run-off issues are addressed. Changes were made to the plan. Using map to explain water sub-grading. Storm water to the run across driveway. Perforated piping and French drains to be installed. Direct any surface water away from neighbor. First solution would be a retaining wall between the drive way. Raised driveway with another perforated drain and another retaining wall. There was no standing water. Want to move any surface water away from home on the south. The four standards have been met.

Temporary vegetation is being installed as soon as possible. Ground water level rises with the lake 581 is the elevation. There was determination that the ground water would not change if there was fill. Taken as many methods as we can to move surface water away from neighbors.

Speaker ? Section 2.1 Health and Safety standard must be abided by. Thought there would be some type of sewer type structure on far east side. Question was raised in last meeting if there was standing ground water and the answer is no.

Roger Mawby (309 East Front Street) Ground water flows to the bay and naturally flows across properties. Aquifer is attached at the shoreline to the Grand Traverse Bay. The bay goes up, the aquifer goes up. Hard surfaces change the flow direction of the water. Since the demolition the water is going to flow the way water flows naturally through a series of pipes to the bay.

Robert Parker (Attorney for Schofields) (901 S. Garfield) A variance is license to violate the law. A variance is not granted lightly. The Schofields are not asking for a variance intending to break the law. The Schofields are not required to demonstrate exception or unique circumstances, but they are required to conform to the townships criteria. Comply with township 7.4.3 and the preamble does not meet that criteria. This project does not negatively affect the neighbors. Typically, these plans are not required for single family development. The Schofields have done this work to make sure they are not creating damage to any of the neighbors. ZBA typically has granted the request.

Typically these plans are not required. This will not harm neighbors. Precedent exists assured has not applied to these. This is a classic case of "Apples and oranges". Criteria this proposal has not been used in prior cases. After looking at this case objectively, then you will approve the Schofield's request.

Parker at the last meeting you were asked about flooding. Thirteen prior flood plans have become before this commission and none have been required. Robert has made the argument that you have approved filling in the flood plain in the past, maybe not exactly like this case, and this is not a new idea. Ask the commission to make some maps and take a look at that.

Speaker? This is an aerial photograph before the house was demolished and that this was a buildable lot. A topographic map was presented and explained elevations. All of these numbers are using the 1985 I.G.L.D. (International Great Lakes Datum). All of the houses exceed the 60 foot setback line.

Speaker? Two new houses are on the flood elevation line, correct?

Argument is made that the fill would elevate the flood plan elevation line to a level of 584.5, which is 1 inch about the defined flood elevation of 583.5. The 60 foot set back is provided. There are other places tested around the peninsula to show the 60 foot setbacks, high water lines, and flood elevation lines.

Question: The demarcation of the property line. If you were to extend 864 Birchwood directly southern water ward. Google maps might be skewed and not very accurate. There are no standards. Fill may be behind or above the flood elevation.

Second CD states here

The zoning ordinance does not give discretion to draw a line across a series of properties and you can fill or build there. Again you have the 60 foot setback high water mark, then we have the flood elevation of 583.7 feet and we are requesting to fill below the flood elevation. The ordinance gives the ZBA the ability to allow fill below the flood elevation.

The general intent 7.4.7, 7.4.3 Section 5.04 in one of the Michigan Zoning Act says that any zoning ordinance made by the board has to be based on standards that are within the ordinance. So the standards that would allow you to permit us to fill above the elevation are according to counsel's letter in sections 7.4.3, which we talked about earlier. Are we disturbing soil, are we covering soil temporarily with something such as mulch, are we trying to grow grass on it, yes, and again we have an erosion control permit as well.

Haywood- Agree with Dusty that the line we show on the map is consistent with the topography. The parcel is very flat. Google Earth only goes in one foot increments and can result in being off by several feet. What I wanted to do was look at other shorelines around the peninsula. Bowers Harbor is flood hazard area recognized by the state and was not used.

Questions from the board

Speaker: Water run-off from the driveway was discussed. What provisions have been made for other water run-off such as from roof, patios, or gutters off to the South or other directions?

Speaker: There would be gutters under the drip edges and then would be French drains underneath the drip edges and both are in place. There the sandy soil would absorb the ground water, which would continue to flow toward the lake. The retaining wall requires more fill and makes it essentially a free standing wall.

Speaker: Are retaining walls subject to **side bar setbacks?**

Speaker: Yes.

Public Comments

Vida: Are there any persons who would like to comment in favor of this action? None

Vida: Are there any persons who would like to comment against this action. Yes

Monnie Peters (1425 Neahtawanta Road) Agree with the staff that it is not unreasonable to make the property buildable in the same way, but the question is to what extent? We know the Great Lakes are dynamic and we have heard a good presentation from Mr. Mauby about the various levels when you have extremely high water. The township ordinance section reads the use of fill in regard to farming, bridle paths, or pathways. The ordinance specifically states we will not build houses in the flood plain. Putting the house much further down and on top of filling in a future amount of flood plain is different than doing something much more limited and much further back. It would not allow a huge house, but it would make the property buildable. No to

filling as much as they want fill now, but that does not mean there is not a spot to build something in.

Speaker: Today the only decision to be made by this board is the request to use fill across the flood plain. This has nothing to do with the building going forward and what they are going to do. Sections 7.4.7, 2.1, and 5.1 gives ZBA the discretion to make this decision.

Closed the public portion of the Meeting

Speaker: These issues have been discussed before. Just to highlight that 2.1 is in regards to Health and public safety of the township, 5.5.1 Health and safety of public is secured and substantial justice occur, 5.7.4 Special Exception whether the public is served and use of neighboring property will not be harmed. These have always been my concerns about putting fill across a flood plain.

Speaker: Definitely did not apply for permitted use and in 7.4.7 sections 3 and 4 flood plain uses and restricted uses. Section 7.2.5, 7.4.3 7.4. 7

Speaker: 7.2.5 7.4.3 FEMA Maps 26055C 0114C designates this as a flood plain. One application for a flood plain variance was denied to fill in a flood plain to build a residence. This was case 549. 2.1 and 5.1 are applicable here. The neighbors to the south must be protected from water run off coming from this property.

Scrocki- Upholding the safety of neighbors is the charge of the ZBA. The standards are vague and yet we must make that decision regarding fill.

Speaker: In a meeting with Mr. Haywood I asked if there were any comps to size of homes outside of the flood plain and we could relate or base a decision or how far the homes from East Shore Drive are and we did not come up with anything that could add continuity to it.

Cowell: Flood plains are not a new idea in building and people have built in flood plains. However, now those laws have been codified such as 2.1 and they are hard learned lessons based on experience. Five foot waves are increasing in intensity with storms along the shoreline. It is not be hard to make an argument that it is a bad idea to place fill across a flood plain. The ordinance as written falls a little short; however, the overriding principle is that it is not a good a sound building idea to build in a flood plain. I do not want anyone to suffer due to the board not being able to do that. Really do not want to see a development pattern set as precedence that it is ok to build on the peninsula within the flood plain.

Speaker: As we do not have clear guidance, are we looking at improving the ordinance in the future for situations like this?

Speaker: Legally my advice to you, just as I that you not be moved by the 13 previous decisions that you were shown by the developer's counselor. Every house is unique, so no in this case it would not set a precedent just as the other 13 did not as this is not what we are talking about. And you have to remember also that the request is not for them to build in the flood plain, but to fill so to remove it out of the flood plain and then at some point in time they will come in with a request to build.

Speaker: Topographically there is a line you could draw and I would suggest that our decision tonight be based upon that line because that is what we have to deal with right now. It is all or nothing and nothing in between and giving equity to them based on the topo maps is what we have to do and that gives fairness to all concerned and the ordinance as well. This may be a little technical and a little difficult to follow but if we look at the map with the flood plain in orange and look right below it and follow the property line, which is a continuation of that line. The drainage is as it has been pointed out goes to the south or to the south and east. So we have on the property within the buildable area with setbacks for the structure. Above the orange on the north side of the property is a horn. There are two horns and I would think that is the place topographically to draw a logical line. Above that line is a graded basin. Then we have an eastern point and a western point where it is going to drain above that area. The most logical place for fill without storm surge, wind driven water, or the normal ebb and rise of Lake Michigan is between the horns and at the ordinary contour line at the high water mark. Looking at the maps provided to us by Mansfield shows the drain basin to the northwest. I would ask that they be allowed to fill 1 inch above the flood plain line up to the two horns.

Speaker: Do you know where know how many square feet that would encompass?

Speaker: No you would have to calculate that mathematically.

Action Motion: The applicant would be able to fill the yellow area above the line on the topographic map (Mansfield Exhibit C Buildable Area).

Board Discussion on Motion

Speaker: Concerned if a person had two bumps on their land and based upon our decision said they were just going to fill that in, is that what we want? A person could look at the decision and say a number of the requests were approved and others were not. It is certainly something that people notice. Since the ordinance is not clear and this includes the neighbors to the south and the homeowners themselves where the guidelines are not clear. Given the seriousness of someone to develop a home or build on top of a flood plain you fill in, I would encourage us that our actions do not produce unintended consequences. Would prefer to be able to point to other properties and show our analysis to a particular point on the peninsula.

Speaker: (seems like attorney) No two cases are alike. You do have a standard to make this decision. You have two perspectives. One is that you do not like building in flood plains and the other is looking at what is wrong with what is being presented to you. What are the safety issues that have not been addressed? 7.47 or 2.1 where does it fall short on these portions of the ordinance. Use the standards that you have. The decision here today is going to drastically affect the property owners and you also do not want to affect other landowners in this approach. It needs to be the approach that has to be consistent and the outcomes may not be the same. We are talking about filling in a flood plain to move it out of a flood plain so they can build a small or large house, but that is not our concern. You need to come up with the best answer you can come up with.

Speaker: The reason I have chosen to look at two points is because I know how water works, it flows downhill. Water takes the softest area it is flowing through and takes that channel. This property does not have a stream. We do have a drainage basin and if you take those two mounds indicate that you have a surface area that is impervious to erosion with the center of the basin has not been. That is why the basin is where it is. If you take those horns and that has a stronger soil base, so the center is not going to be suspect to erosion if the engineering standards are met. If we fill outside of those horns, then the other forces come into play. Geographical we are filling in an area that has been resistant to water erosion.

Speaker: Have we as a board acquired from our people an opinion that we should be concerned with 2.1. that we should be afraid of. The developer and their experts are saying we have got it and there is nothing to worry about. Have we had our people look at this information to have an opinion that the risk is too great or if our people agree with you.

Speaker: The answer is no. This is so unusual to have a drainage basin within one property we would be hard pressed to find another identical property. Who is to say if we found another property with two points of high ground.

Change tape to 3

Speaker: They are asking for fill and then they put the fill on this property and then there are problems are the township responsible?

Speaker: The property owners would get a lot of trespass and flooding lawsuits if it is not done properly. The homeowner would also have problems if this were the case. Where we get into trouble is when we state dictate engineering.

Speaker: I am just concerned with the township being held liable if something goes wrong. What if we approve something that is not the best that it can be.

Gordon: The township responsibility is to make the best decision based upon the information we get from the developer, builder, and your own planning. When you make those decisions, the responsibility then falls to the homeowner. There is a push back from ZBA and that is a good thing as that is what you are accountable to.

Speaker: So Gordon is there any information from our engineer?

Gordon: They have not been asked as we have changed contract engineers.

Speaker: What more would you like me to take about? Would you like to see the drainage patterns? We would connect the mound that is on the south side of the property to the ridge on the outside of the site and draw a line There was no septic in this area of the site. This area was more structurally sound than the other areas. The higher area of the property is the road and is true for most of the properties on South View Road. The slope of the contour is 583 feet, which is the

Speaker: That is not what his question was. If you build across a flood plain you will increase soil erosion and stability of soil in that area. The question is if where the line has been drawn for fill would prevent this. Would this line prevent this from happening?

Speaker: Discussion then occurs regarding photographs of standing water, how quickly water is absorbed into the soil, and into the proposed fill. Do you see difficulties in having that portion of the flood plain filled in?

Speaker: The proposed fill does not have much to do with the ground water unless there were steep slopes, which this property does not have. The plan goes above and beyond the requirements.

Speaker: There are properties that were built before the ordinance and after on the peninsula. In 1986 many properties along this shore line experienced ice damage and storm surges. Attempts to mitigate these affects included wire filled with rocks and cement walls. The concern is if this proposed solution would harm the southern neighbors or in fact the proposed house on this property. The owner's still need to obtain a building permit and go through other processes

Speaker: With all due respect, this discussion is not germane to the issue at hand.

Gordon: With all discussions we have had, we feel that as a board we have come up with a reasonable area for fill and have a hard time approving the amount of fill being requested.

Speaker: I am confident that the engineers can come up with solutions to mitigate the issues of 2.1; what concerns me is the wave action. How do we balance protecting the public and we do not have standards for that.

Christenson: In that regard you do have standards 7.4.7/7.4.3 and 2.1 gives you guidance; you may not like them and those are what you have and that is what you need to base your decision on. The concerns you are all addressing have been satisfied by the developer and the engineer. If you are not satisfied then you need to have your own people make their analysis. Not meaning any disrespect, you are not experts in these areas. This is a hard decision.

Action-Motion: Motion is made to deny the application. Second: **speaker**.

Commission roll call taken and motion passed.

Speaker: At the beginning of this hearing I quoted 2.1, 5.1.1, 5.7.4 and language in its entirety in those 3 sections.

Souter: 2.1, 5.1 7.4.7 sections 3 and 4 FEMA Maps 26055c that designates this as a flood plain.

Roll call vote: Vida, Souter, Cowell, Serocki, McBride all voted yes.

Approval of Minutes

Serocki: Serocki requested a copy of the meeting transcript from July 13, 2017 be placed on the website as the minutes posted cannot be changed.

Other requests for minute corrections were made by Serocki and Souter to Deeren. These will be corrected.

Action-Motion: Minutes of July 13, 2017 be approved. Motion passed.

Monnie Peters (1425 Neatawanta Rd.) Need to make sure the consideration of wave action from the shore regarding the peninsula needs to be stronger. Our flood plains are not on inland lakes or rivers. The direction needs to be that this board not have to decide this type of issue regarding the flood plain issue again.

Nancy Heller (3091 Bluewater Rd) I would request that the zoning administrator not be given the additional task of taking minutes at the meeting so her attention could be fully on the content of the meeting. This should come from the Clerk's office.

Action Motion: *That the mediator requests the planning commission begin work immediately work on the flood plain ordinance to improve it and have specific standards.*

Motion carried

Action-Motion: *Serocki will send a letter to the planning commission from the zoning board outlining specific requests.*

Motioned carried

Adjournment

Submitted Respectively,

Lola Jackson- transcribing secretary