

PENINSULA TOWNSHIP
Zoning Board of Appeals
March 10, 2016

Meeting called to order at 7:00 p.m.

Roll Call

Present: Cowall, Wunsch, Soutar (Chair), Witkop and Elliott

Absent: Vida (excused)

Also Present: **Michelle Reardon**, Director of Planning and Zoning, **Claire Schoolmaster**, Planning and Zoning Coordinator and **Deb Hamilton**, Recording Secretary

Approve Agenda

MOTION: Cowall/Wunsch to approve the agenda as presented. **MOTION PASSED**

Conflict of Interest

None

Communication Received

None

Public Input

None

Scheduled Public Hearings

A. Request No. 842, Zoning R-1B

Applicant: Ted M. Price, 812 S. Garfield, Suite K, Traverse City, MI 49686

Owner: John F. & Susan K. Boles, 25111 Waterstone Estates Cir E., Tomball, TX 77375

Property Address: 9064 Peninsula Dr., Traverse City, MI 49686

Request: (1) a variance of 5 feet and 11 inches (5' 11") from the required 15 feet (15') side yard setback to allow for the construction of a 131 square foot covered deck addition.

Parcel Code No. 28-11-690-006-00

Reardon reviewed the request. *Ted Price, 812 S Garfield Suite K, Traverse City*, said when the house was built in 1948 it was set on a non-conforming angle. They are trying to improve on the aesthetics of the home. When the trees came down last August they began exploring covering the deck. There are dormers in the roof line. The roof lines will look nicer without having roof line that is part way through a dormer. That is why there is an additional 2 feet 11 inches beyond the current encroachment.

Soutar opened Public Hearing at 7:08 p.m.

Pete Erickson, 9040 Peninsula Dr., said he lives in the house to the south. Peninsula Drive is one of the most scenic drives in the country. The house directly to the north of Boles is dilapidated. Aesthetics as one drives out Peninsula Drive is important. The house is symmetrical house. In order to maintain that aesthetic value he thinks what the Boles and Mr. Price have come up with is aesthetically

pleasing. If the request is not approved it would not be in keeping with symmetric design of the house that is currently there.

Soutar closed Public Hearing at 7:10 p.m.

Cowall said appreciates the desire for a certain aesthetic but does not find any redeeming quality in this request as it pertains to the ordinance itself. It is difficult to work through the basic and special conditions and not find multiple opportunities to deny the request. There is room on the lot to design something that would completely fall within the ordinance. It would be personally difficult to accept a variance on this. **Elliot** said aesthetics does not support the code but does not have an objection going another 2 feet 11 inches. **Soutar** said to would be nice to find a way to make this aesthetically pleasing but the request is against the specifics of the ordinance. **Witkop** said agrees the standards in this township are tough but the standards are that way for a reason. Aesthetically this would look great but will have a hard time finding anything to approve it. **Wunsch** agrees largely with what has been said. On the face of it he likes the proposal but he does not see how he could rationalize approving this request.

Ted Price said he appreciates what the Board is saying but go back to the fact the house was built in 1948 at a goofy angle. The house is already non-conforming as it is. The Boles are playing the hand they were dealt but playing the best way they can. There are other ways of doing it but will probably not look good or manage the water as it comes off the roof. We feel have picked best choice from a construction, water management and aesthetic perspective. Price asked the Board to reconsider.

Soutar said the Board has to look at the law, how it needs to be applied and whether this would set a precedent. **Witkop** said the applicant mentioned other options. There is the option to not do anything at all.

Peninsula Township Planning & Zoning Department
FINDINGS OF FACT

ZBA Request #842 – 9064 Peninsula Dr.
March 10, 2016

DECISION AND ORDER

Applicant: Ted Price, appointed representative of property owner

Hearing

Date: March 10, 2016

PROPERTY DESCRIPTION

The property of 9064 Peninsula Dr., Traverse City, MI 49686, Parcel No. 28-11-690-006-00, herein after referred to as the “property”.

APPLICATION

Request: (1) a variance of 5 feet 11 inches (5’11”) from the required 15 feet side yard setback for a 131 square foot covered deck addition.

The Board having considered the Application, a public hearing having been held on March 10, 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 six (6) 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 zoned Coastal Zone Single and Two-Family (R-1B). (Exhibits 1, 2)
2. The Board finds that the lot was platted and the residential structure was built in 1948. Both are legally nonconforming. (Exhibit 5)
3. The Board finds that the existing deck was permitted in error in 1985 due to an incorrect site plan, and is therefore a legally non-conforming structure. (Exhibits 2, 6)
4. The Board finds that the proposed covered deck addition does not conform to relevant zoning standards. (Exhibits 2, 3, 4)
5. The Board finds that the applicant requests (1) a variance of 5 feet 11 inches (5'11") from the required 15 feet side yard setback for a 131 square foot covered deck addition.

MOTION: Wunsch/Cowall to approve the general Findings of Fact. **MOTION PASSED**

Variance Request #1 A variance of 5 feet 11 inches (5'11") from the required 15 feet side yard setback for a 131 square foot covered deck addition.

FINDINGS UNDER SECTION 3.2 – DEFINITIONS – PRACTICAL DIFFICULTY OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 3.2 definition of Practical Difficulty of the Ordinance for each of the following standards listed in that section:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome;

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)

This standard HAS NOT been met.

2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)

This standard HAS NOT been met.

3. The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)

This standard HAS NOT been met.

MOTION: Witkop/Cowall all three of the practical difficulties have not been met.

Roll Call Vote: Elliott=yes, Soutar=yes, Witkop=yes, Wunsch=yes and Cowall=yes **MOTION PASSED**

FINDINGS UNDER SECTION 5.7.3 VARIANCE OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 5.7.3 of the Ordinance for each of the following standards listed in that section:

Basic Conditions: ALL of the Basic Conditions SHALL be clearly demonstrated.

1. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)

This standard HAS NOT been met.

2. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)

This standard HAS NOT been met.

3. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

The following findings may support this standard HAS been met.

- a. The Board finds that generally the deck is unlikely to decrease the value of the subject property or that of any neighboring properties. (Exhibits 3, 4)

This standard HAS been met.

4. Is not where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.

The following findings may support this standard HAS NOT been met.

- a. The Board finds that the property is zoned Coastal Zone Single and Two-Family (R-1B). According to Section 6.2.2 an attached deck is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that there is an existing attached deck currently in use. (Exhibits 3,4)
- c. The Board finds that the proposed addition does not comply with the side yard setback requirement. (Exhibits 2, 3, 4)
- d. The Board finds that according to Section 7.5.4 a variance would not be needed to construct a roof structure for the existing nonconforming attached deck. (Exhibit 2)

This standard HAS NOT been met.

5. Will relate only to the property that is under control of the applicant.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is the appointed representative of the property owner and the variance is specific to the property owners' parcel. (Exhibit 3)

This standard HAS been met.

MOTION: Wunsch/Cowall Basic Conditions 1, 2 and 4 have not been met.

Roll Call Vote: Soutar-yes, Witkop-yes, Wunsch-yes, Cowall-yes and Elliott-yes **MOTION PASSED**

MOTION: Witkop/Wunsch Basic Conditions 3 and 5 have been met.

Roll Call Vote: Witkop-yes, Wunsch-yes, Cowall-yes, Elliott-yes and Soutar-yes **MOTION PASSED**

Special Conditions: At least one shall be clearly demonstrated.

3. Where the lot or parcel of land was of legal record or had been laid out by a registered surveyor prior to the effective date of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that that the lot was created prior to the effective date of the Ordinance. (Exhibit 5)
- b. The Board finds that that

This standard HAS been met.

MOTION: Witkop/Wunsch Special Condition 3 - the standard has been met.

Roll Call Vote: Cowall-yes, Elliot-yes, Soutar-yes, Witkop-yes and Wunsch-yes **MOTION PASSED**

VARIANCE REQUEST # 1 MOTION TO APPROVE / DENY

MOTION: Elliott/Witkop The Peninsula Township Board of Appeals has **DENIED** your request for a variance of 5 feet 11 inches (5'11") from the required 15 feet side yard setback for a 131 square foot covered deck addition.

Roll Call Vote: Elliott=yes, Soutar=yes, Witkop=yes, Wunsch=yes and Cowall=yes **MOTION PASSED**

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #1 be **DENIED**.

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

B. Request No. 844, Zoning A1

Applicant: Josh & Lesli Humphrey, 1101 Elmer Dr., Traverse City, MI 49686

Owner: Josh & Lesli Humphrey, 1101 Elmer Dr., Traverse City, MI 49686

Property Address: 1101 Elmer Dr., Traverse City, MI 49686

Request: (1) a variance of 14 feet (14') from the required 35 feet (35') front yard setback to allow for the construction of a covered porch addition.

Parcel Code No. 28-11-008-021-55

Reardon reviewed request. *Lesli Humphrey, 1101 Elmer Dr.*, said it is an interesting lot. 10 acres with an existing home built in 1974. The parcel originally was larger. The two adjacent parcels were part of the parent parcel. When the house was built it was conforming. When the original lot owner sold off the

adjacent parcels it became legal non-conforming. Applicant is proposing a small non-conforming portion in the front with an overhang and bringing out the front porch so it is not a little sliver. The applicant did remove the decking on west side that was non-conforming which lessens the non-conformity. Adding the overhang and covering the porch will help preserve the foundation. *Josh Humphrey, 1101 Elmer Dr.*, said there is some water seepage into basement because the water drains directly off the surface of the house. This roof will help shed that water out further and help preserve the foundation. They want to improve the home and the functionality. *Lesli Humphrey* said the majority is conforming.

Elliot said the word she heard that interested her was “foundation”. She notices serious challenges with the foundation. **Witkop** asked how the little corner portion helps. *Lesli Humphrey* said there are two roof lines there. **Witkop** said so the roof line is diverting the water. *Lesli Humphrey* said yes. **Cowall** asked if any other design was looked at that was totally conforming. *Lesli Humphrey* said the house is non-conforming any roof overhang will be non-conforming. *Josh Humphrey* said looked at moving the door further but it restricts the functionality of the home. *Lesli Humphrey* said the retaining wall slopes down and moving the door down gets into the grade. **Soutar** said removing the deck (a non-conforming structure) helps the application and supported it by structural improvement. Soutar also commented on driveway and the agricultural zoning.

Soutar opened the Public Hearing at 7:43 p.m.

David Clark, 11522 Peninsula Dr., said looks like a minor thing and approves.

Soutar closed the Public Hearing at 7:44 p.m.

Soutar said the applicant has given the Board reasons why it could be approved. From a structural standpoint this would be positive for community. Soutar is in favor of variance. **Witkop** said overhangs are important in Michigan. She was concerned about adding on the other area but it makes sense with the door placement. Witkop feels the applicant has done everything they could have done and attempted to meet the ordinance. **Wunsch** said considering structural challenges and the property he can see reasons to grant the variance. **Cowall** said appreciates the request and feel the applicant is operating in good faith. Cowall asked staff how that side is the front. **Reardon** said the ordinance defines the lot line which is or contains the road line of the principle road or right-of-way providing access to the lot. **Elliott** said applicant has had difficulties and made a good faith effort to address with as compliant solution as they could.

Peninsula Township Planning & Zoning Department

FINDINGS OF FACT

ZBA Request #844 – 1101 Elmer Dr.

March 10, 2016

DECISION AND ORDER

Applicant: Josh & Lesli Humphrey, property owners

Hearing

Date: March 10, 2016

PROPERTY DESCRIPTION

The property of 1101 Elmer Dr., Traverse City, MI 49686, Parcel No. 28-11-008-021-55, herein after referred to as the “property”.

APPLICATION

Request: (1) a variance of 14 feet (14’) from the required 35 feet (35’) front yard setback to allow for the construction of a covered porch addition.

The Board having considered the Application, a public hearing having been held on March 10, 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 zoned Agricultural (A-1). (Exhibits 1, 2)
2. The Board finds that the lot and structure were both created in 1974. (Exhibit 3)
3. The Board finds that the existing residential structure is legally non-conforming. (Exhibits 2, 5)
4. The Board finds that the proposed covered porch addition does not conform to relevant zoning standards. (Exhibits 2, 3, 4, 5)
5. The Board finds that the applicant requests (1) a variance of 14 feet (14’) from the required 35 feet (35’) front yard setback to allow for the construction of a covered porch addition. (Exhibit 3)

MOTION: Witkop/Wunsch to approve the general Findings of Fact. **MOTION PASSED**

Variance Request #1 a variance of 14 feet (14’) from the required 35 feet (35’) front yard setback to allow for the construction of a covered porch addition.

FINDINGS UNDER SECTION 3.2 – DEFINITIONS – PRACTICAL DIFFICULTY OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 3.2 definition of Practical Difficulty of the Ordinance for each of the following standards listed in that section:

1. Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for any permitted purpose, or would render conformity unnecessarily burdensome;

The following findings may support this standard HAS been met.

- a. The Board finds that strict compliance with the ordinance would result in further damage to the legal non-conforming residential structure. (Exhibit 3, 5)

This standard HAS been met.

2. A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;

The following findings may support this standard HAS been met.

- a. The Board finds that a letter relaxation would result in further damage to a legal non-conforming structure. (Exhibit 3, 5)

This standard HAS been met.

3. The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

The following findings may support this standard HAS been met.

- a. The Board finds that the plight of the owner is due to unique circumstances; specifically the existing roof line is causing damage to the foundation of the legal non-conforming structure and the topography of the site. (Exhibit 3, 5)

This standard HAS been met.

MOTION: Wunsch/Witkop to approve the findings of fact supporting the standard for items 1, 2 & 3.

Roll Call Vote: Witkop-yes, Wunsch-yes, Cowall-yes, Elliott-yes and Soutar-yes **MOTION PASSED**

FINDINGS UNDER SECTION 5.7.3 VARIANCE OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 5.7.3 of the Ordinance for each of the following standards listed in that section:

Basic Conditions: ALL of the Basic Conditions SHALL be clearly demonstrated.

1. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoning Agricultural (A-1). According to Section 6.2.2 an attached porch is a customary accessory structure to a primary structure and is a use by right in the A-1 zoning district. (Exhibit 2)
- b. The Board finds that the altered roof line and overhangs are necessary to protect a legal non-conforming residential structure. (Exhibit 3, 5)

This standard HAS been met.

2. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoning Agricultural (A-1). According to Section 6.2.2 an attached porch is a customary accessory structure to a primary structure and is a use by right in the A-1 zoning district. (Exhibit 2)
- b. The Board finds that the altered roof line and overhangs are necessary to protect a legal non-conforming residential structure. (Exhibit 3, 5)

This standard HAS been met.

3. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.

The following findings may support this standard HAS been met.

- a. The Board finds that generally the covered porch is unlikely to decrease the value of the subject property or that of any neighboring properties. (Exhibits 3, 4)

This standard HAS been met.

4. Is not where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.

The following findings may support this standard HAS been met.

- a. The Board finds that the conditions relating to the property are special and unique; specifically the existing roof line is causing damage to the foundation of the legal non-conforming structure and the topography of the site. (Exhibit 3, 5)

This standard HAS been met.

5. Will relate only to the property that is under control of the applicant.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is the property owner and the variance is specific to the property owners' parcel. (Exhibit 3)

This standard HAS been met.

MOTION: Witkop/Elliott the Basic Conditions have been met.

Roll Call Vote: Wunsch=yes, Cowall=yes, Elliott=yes, Soutar=yes and Witkop=yes **MOTION PASSED**

Special Conditions: At least one shall be clearly demonstrated.

1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance, these hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

The following findings may support this standard HAS been met.

- a. The Board finds that the existing roof line is causing damage to the legal non-conforming residential structure and the topography of this site is such that the altered roof lines and overhangs are necessary to protect the structure from further damage. (Exhibit 3, 5)

This standard HAS been met.

MOTION: Elliott/Witkop Special Condition #1 has been met.

Roll Call Vote: Cowall-yes, Elliott-yes, Soutar-yes, Witkop-yes and Wunsch-yes **MOTION PASSED**

VARIANCE REQUEST # 1 MOTION TO APPROVE

MOTION: Witkop/Wunsch The Peninsula Township Board of Appeals has **APPROVED** your request for a variance of 14 feet (14') from the required 35 feet (35') front yard setback to allow for the construction of a covered porch addition.

Roll Call Vote: Elliott-yes, Soutar-yes Witkop-yes, Wunsch-yes and Cowall-yes **MOTION PASSED**

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

Reardon informed the applicant they will need to apply for a Land Use Permit.

C. Request No. 845, Zoning R-1B

Applicant: David J. Clark, 11522 Peninsula Dr., Traverse City, MI 49686

Owner: David J. Clark, 11522 Peninsula Dr., Traverse City, MI 49686

Property Address: 11522 Peninsula Dr., Traverse City, MI 49686

Requests: (1) a variance of 6 feet (6') from the required 30 feet (30') front yard setback to allow for the construction of a 132 square foot residential addition; (2) a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage; (3) a variance of 2.7% from the required 15% maximum area coverage to allow for the construction of a residential addition and attached garage.

Parcel Code No. 28-11-467-022-00

Reardon reviewed request. **Elliott** asked on the third variance would it be appropriate to request a minor storm water review to insure drainage. **Reardon** said that could be a condition to have engineer look at this.

David Clark, 11522 Peninsula Dr., explained the history about front setback. The applicant thought Peninsula Dr. was the front yard but learned that Chimney Ridge is the front yard. Clark said he is a C5 Quadriplegic since 1972. His wife was his sole caregiver from 1977 until 2010-11. Daughter and son-in-law moved in about 2 years ago to take care of Mr. Clark and Mrs. Clark until she passed away. For them to be able to take care of Mr. Clark they need private space. It has gotten to the point if they do not have separate space they will move on. If they move on Mr. Clark will have to have Comfort Keepers come in everyday which will cost \$15,000 a month. He cannot afford this. He would have to move out of his own home that he has lived in since 2001 and go to a nursing home. Variance would allow him to stay in his own home and with his family. He needs to be accommodated by necessary and reasonable accommodations. He feels his request is a reasonable request and necessary addition to stay in home. The Board would have to find that the modification would fundamentally and unreasonably alter that matter or purpose of the zoning ordinance to deny the request. The burden is on the municipality to prove that occurred. Mr. Clark's daughter said this is an emotional situation. They have done a lot of research to find viable options to make this work. It is not reasonable to have her dad move into a nursing home. We need separate spaces to maintain a healthy functional family life. Mr. Clark's son-in-law said his wife and three kids are upstairs in a 600 sq ft, 3 bedrooms, one bath apartment. It is stressful. It is difficult to be a care giver with the stress and anxiety. This will not solve all their problems but will take care of a good majority of them.

Cowall asked if the design as proposed was based on Peninsula Dr. being the front. *Clark* said yes. *Son-in-law* said this will allow a separate entrance for Mr. Clark's space. **Elliott** said ADA requirements eat up square footage. The design is reasonable. **Cowall** asked would there be any modifications that would fit the building envelope like moving the garage to the north. **Clark** said moving the garage causes problems with the design of the ramps into his living space. **Clark** said in regards to the drainage. His yard stays dry. Drainage coming down Chimney Ridge goes to other side of road into a retaining pond.

Soutar opened Public Hearing at 8:39 p.m.

No comments

Soutar closed Public Hearing at 8:39 p.m.

Soutar said ADA applies here. **Witkop** said agrees and should move forward. **Wunsch** said a case for approval has been made. **Cowall** concurs. **Elliott** agrees and defers to staff regarding the minor storm water report. **Reardon** said separate from the Great Lake with right-of-way may be subject to minor. Reardon does not have a problem of going without storm water review. **Elliott** said she is okay with that.

FINDINGS OF FACT

ZBA Request #845 – 11522 Peninsula Dr.
March 10, 2016

DECISION AND ORDER

Applicant: David J. Clark, property owner

Hearing

Date: March 10, 2016

PROPERTY DESCRIPTION

The property of 11522 Peninsula Dr., Traverse City, MI 49686, Parcel No. 28-11-467-022-00, herein after referred to as the “property”.

APPLICATION

Requests: (1) a variance of 6 feet (6') from the required 30 feet (30') front yard setback to allow for the construction of a 132 square foot first floor residential addition; (2) a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage; (3) a variance of 2.7% from the required 15% maximum area coverage to allow for the construction of a residential addition and attached garage to provide first floor living accommodations for a disabled resident.

The Board having considered the Application, a public hearing having been held on March 10, 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 zoned Costal Zone Single and Two-family (R-1B). (Exhibits 1, 2)
2. The Board finds that a single family dwelling and attached garage are use by right in the R-1B district. (Exhibit 2)
3. The Board finds that the property is Lot 22 of the Chimney Ridge Subdivision which was recorded in 1975, after the adoption of the Zoning Ordinance. (Exhibit 5)
4. The board finds that the existing residential structure is legally non-conforming due to an error in permitting. (Exhibit 2)
5. The Board finds that the Applicant requests (1) a variance of 6 feet (6') from the required 30 feet (30') front yard setback to allow for the construction of a 132 square foot residential addition; (2) a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage; (3) a variance of 2.7% from the required 15% maximum area coverage to allow for the construction of a residential addition and attached garage.

MOTION: Wunsch/Cowall to approve the General Findings of Fact. **MOTION PASSED**

Variance Request #1: a variance of 6 feet (6') from the required 30 feet (30') front yard setback to allow for the construction of a 132 square foot first floor residential addition to accommodate a disabled resident.

FINDINGS UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

The Board makes the following findings of fact as required by the ADA for each of the following standards:

1. The requested variance relates to an individual with a physical or mental impairment that substantially limits one or more of the major life activities of that individual.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is proposing to build an addition to provide first floor living accommodations and garage for a disabled resident who cannot walk, uses a wheelchair, and requires 24 hour assistance. (Exhibit 3)
- b. The Board finds that because this resident cannot walk and therefore uses a wheelchair, this impairment limits a major life activity, i.e. walking. (Exhibits 3, 4)
- c. The Board finds that this impairment of a major life activity is substantial because the impairment is permanent in nature for this individual. (Exhibit 4)

This standard HAS been met.

2. The requested variance is reasonable and necessary to afford the disabled resident the equal opportunity to use and enjoy their property.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is proposing to build an addition to provide first floor living accommodations and garage for a disabled resident who cannot walk, uses a wheelchair, and requires 24 hour assistance. (Exhibit 3)
- b. The Board finds that because this resident cannot walk and therefore uses a wheelchair, this impairment limits a major life activity, i.e. walking. (Exhibits 3, 4)
- c. The Board finds that according to Section 6.2.2(1) a single-family dwelling is a use by right in the R-1B district. (Exhibit 2)
- d. The Board finds that the applicant proposes to build first floor ADA compliant living and bathroom facilities (Exhibit 3).

This standard HAS been met.

VARIANCE REQUEST #1 MOTION TO APPROVE / DENY

MOTION: Witkop/Cowall the two standards have been met and The Peninsula Township Board of Appeals has **APPROVED** your request for a variance of 6 feet (6') from the required 30 feet (30') front yard setback to allow for the construction of a 132 square foot first floor residential addition to accommodate a disabled resident.

Roll Call Vote: Witkop-yes, Wunsch-yes, Cowall-yes, Elliott-yes and Soutar-yes **MOTION PASSED**

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

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.

Variance Request #2: a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage to accommodate a disabled resident.

FINDINGS UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

The Board makes the following findings of fact as required by the ADA for each of the following standards:

1. The requested variance relates to an individual with a physical or mental impairment that substantially limits one or more of the major life activities of that individual.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is proposing to build an addition to provide first floor living accommodations and garage for a disabled resident who cannot walk, uses a wheelchair, and requires 24 hour assistance. (Exhibit 3)
- b. The Board finds that because this resident cannot walk and therefore uses a wheelchair, this impairment limits a major life activity, i.e. walking. (Exhibits 3, 4)
- c. The Board finds that this impairment of a major life activity is substantial because the impairment is permanent in nature for this individual. (Exhibit 4)

This standard HAS been met.

2. The requested variance is reasonable and necessary to afford the disabled resident the equal opportunity to use and enjoy their property.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is proposing to build an addition to provide first floor living accommodations and garage for a disabled resident who cannot walk, uses a wheelchair, and requires 24 hour assistance. (Exhibit 3)
- b. The Board finds that because this resident cannot walk and therefore uses a wheelchair, this impairment limits a major life activity, i.e. walking. (Exhibits 3, 4)
- c. The Board finds that according to Section 6.2.2(1) an attached garage is a customary accessory structure to a primary structure and is a use by right in the R-1B zoning district. (Exhibit 2)
- d. The Board finds that the resident requires an extended garage to accommodate a wheelchair accessible minivan for the disabled resident, as well as space for the 24 hour caretakers' vehicles (Exhibit 3).

This standard HAS been met.

VARIANCE REQUEST #2 MOTION TO APPROVE / DENY

MOTION: Cowall/Wunsch both standards under the Americans with Disabilities Act have been met and The Peninsula Township Board of Appeals has **APPROVED** your request for a variance of 9 feet (9') from the required 30 feet (30') front yard setback to allow for the construction of an 888 square foot attached garage to accommodate a disabled resident.

Roll Call Vote: Wunsch-yes, Cowall-yes, Elliott-yes, Soutar-yes and Witkop-yes **MOTION PASSED**

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

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.

Variance Request #3: a variance of 2.7% from the required 15% maximum area coverage to allow for the construction of a residential addition and attached garage to provide first floor living accommodations for a disabled resident.

FINDINGS UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

The Board makes the following findings of fact as required by the ADA for each of the following standards:

1. The requested variance relates to an individual with a physical or mental impairment that substantially limits one or more of the major life activities of that individual.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is proposing to build an addition to provide first floor living accommodations and garage for a disabled resident who cannot walk, uses a wheelchair, and requires 24 hour assistance. (Exhibit 3)
- b. The Board finds that because this resident cannot walk and therefore uses a wheelchair, this impairment limits a major life activity, i.e. walking. (Exhibits 3, 4)
- c. The Board finds that this impairment of a major life activity is substantial because the impairment is permanent in nature for this individual. (Exhibit 4)

This standard HAS been met.

2. The requested variance is reasonable and necessary to afford the disabled resident the equal opportunity to use and enjoy their property.

The following findings may support this standard HAS been met.

- a. The Board finds that the applicant is proposing to build an addition to provide first floor living accommodations and a garage for a disabled resident who cannot walk, uses a wheelchair, and requires 24 hour assistance. (Exhibit 3)
- b. The Board finds that because this resident cannot walk and therefore uses a wheelchair, this impairment limits a major life activity, i.e. walking. (Exhibits 3, 4)
- c. The Board finds that according to Section 6.2.2(1) a single-family dwelling and attached garage are use by right in the R-1B district. (Exhibit 2)
- d. The Board finds that the applicant proposes to build first floor ADA compliant living and bathroom facilities (Exhibit 3).
- e. The Board finds that the resident requires an extended garage to accommodate a wheelchair accessible minivan for the disabled resident, as well as space for the 24 hour caretakers' vehicles (Exhibit 3).

This standard HAS been met.

VARIANCE REQUEST #3 MOTION TO APPROVE / DENY

MOTION: Witkop/Wunsch Both findings have been met and The Peninsula Township Board of Appeals has **APPROVED** your request for a variance of 2.7% from the required 15% maximum area

coverage to allow for the construction of a residential addition and attached garage to provide first floor living accommodations for a disabled resident.

Roll Call Vote: Cowall-yes, Elliott-yes, Soutar-yes, Witkop-yes & Wunsch-yes **MOTION PASSED**

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

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 meetings

MOTION: Elliott/Wunsch to approve the November 12, 2016 minutes. **MOTION PASSED**

MOTION: Cowall/Wunsch to approve the January 14, 2016 minutes. **MOTION PASSED**

New Business

Witkop gave Township Board report.

Wunsch gave Planning Commission report

Reardon asked the Board to review the proposed meeting dates.

Adjournment

MOTION: Cowall/Witkop to adjourn at 8:53p.m. **MOTION PASSED**

Respectfully submitted by Deb Hamilton, Recording Secretary