

MINUTES
PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS MEETING

Township Hall 13235 Center Road

Date: April 12, 2018

7:00 PM

Call to Order by Vida 6:58 PM

Pledge of Allegiance

Roll Call of Attendance Vida, Soutar, Serocki, Cowall, McBride. Absent: Wahl (excused).
Also present: Christina Deeren, Zoning Administrator

Approve Amended Agenda The amended agenda includes the addition of the Jensen request for a liquor license under New Business Item B and the approval of the minutes for November 19, 2017 is moved under New Business Item C. Soutar moved that Amended Agenda be approved. Serocki second.

PASSED UNAM

Conflict of interest NONE

Brief Citizen Comments for Items Not on the Agenda: NONE

New Business:

A. Request No. 864, Zoning R-1C

Applicant: Andrea M. Elliott Trust, 625 Edmar Dr., Traverse City, MI 49686

Owner: Andrea M. Elliott, 625 Edmar Dr., Traverse City, MI 49686

Property Address: 625 Edmar Dr., Traverse City, MI 49686

Request: Requesting a variance from the required 25 foot front yard setback to a 20 foot front yard setback for a proposed 12 feet by 22 feet addition to an existing 22 feet by 30 feet garage.

Parcel Code No. 28-11-590-007-00

Andrea Elliott 625 Edmar Drive: Have become a blended family and requesting more space by adding onto the existing garage. This will allow for our son to practice his lacrosse in the winter and give us more storage. Once we put the bikes in the garage, we do not have any extra storage. The house does not have a basement.

Serocki: How much more concrete is going to have to be poured to access the new side of the garage?

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Elliott: The access to the garage would remain the same. We are not planning on making a 3 car garage driveway. There will be a concrete path just to access the new addition.

Vida: This lot is small at about a third of an acre. As I understand it the lot coverage issue is not a factor because it is part of a cul-de-sac.

Deeren: When the subdivisions are approved the lot coverage changes because they have to have more open space and the lot percentage becomes bigger because there is more open space.

Vida: Did the zoning commissioner explain how the pie shape portion of your expansion encroaches on the 25 foot setback. Did you consider other options so that it would conform?

Elliott: We did, but 6 feet is not enough storage or room for our son to practice his lacrosse in the winter months. We also did consider expanding toward the back, but our electrical service comes in through the garage and it would require us to relocate the electrical.

There were no additional questions from the board and **Vida** asked if anyone else would like to speak for or against the request.

Mark Zelinski 625 Edmar Road: I am Andrea Elliott's husband. Adding just 6 feet would be an expense and that would not give us what we need. We were also hoping to improve the curb appeal of the home with the gabled entrance and new siding.

Deeren: If you do not add on the extra space now, is this something you would consider doing in the future?

Andrea: We would either do it now or not at all.

Vida: Asks if there is anyone else who wishes to speak on behalf of the applicant – none. Anyone wish to speak in opposition – None.

Closed public portion of the hearing and send it back to the board.

McBride: Can doing to a third garage stall, which is conforming give you the space you need?

Zelinski: Going forward adding to the side of the space would make it too long and not add to the appearance of the home and is not very attractive.

Cowall: In a situation like this the ordinance is very clear that aesthetics or cost of alternates do not come into play. There is not an actual physical feature of the site that would prevent other options, no physical topography, or no remarkable size. There are other spots on the lot and other buildable places. When you have options the cost of the other options does not apply to the ordinance. This is hard for me to justify under the ordinance due to these issues that we have to ignore when making our determination. This request makes logical sense, but does not cover the Basic Conditions for a variance.

Soutar: Where is the electrical facility exactly on the back of the garage?

Zelinski: (Shows where the electric panel is on diagram)

Soutar: There is some potential to move the garage back 6-8 feet. The fact are the salient fact here. This would make the garage 36x36 moving the electrical is a possible solution. It is difficult to grant a variance when there are other possibilities involved. I cannot see that we would hold to a variance

Serocki: When you look at the lot and there is not that much traffic around the site. This is a fairly minor request. However when I look at the conditions, I cannot say this meets all of the Basic Conditions.

Vida: Set backs are always difficult to deal with. Adding on to the garage in the front is far simpler than adding the garage onto the rear. Physical conditions of the size of the lot would require a special review. Although it encroaches on the setback I was feeling comfortable based on those facts based on the shape and shallowness of the property. Does anyone want to make a motion?

Serocki: Requests Deeren to read the Basic Conditions for a Variance from the website.

Deeren: The applicant must meet all of the Basic Conditions for a Variance.

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.

b) The need for the variance is not the result of actions of the property owner (self-created) or previous property owners.

c) 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.)

d) 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.

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

f) 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.

Deeren: I just want to point out that if they built to the right of the house they would not need a variance and could just come in and obtain a building permit. That is a possibility.

Cowall: If the addition were made to the side, there would be no issue of setbacks.

Selinski: The problem with that is that there is a drainage ditch. That was the excavators concern.

Deeren: Where does the sewer and utilities come in, from the front of the property or the back?

Elliott: The well and sewer are both in the front.

Vida: Makes a motion that the variance be approved. This is an unusual circumstance due to the size and shallowness of the lot and the physical dimensions of the lot. I have to refer to 2b.

Cowall: Requests that the board evaluate all of the conditions for granting a variance.

Is there any indication and documentation that the drain ditch is a problem? What we heard was that this was the advice they received. We have no reference to that or anything that describes that.

By law you cannot shed your water onto another person's property with your modification. Again that is not even the variance that is being requested. If you want to make a case for that, then I would be eager to hear those comments.

Soutar: I would think that the present drainage, which cannot be altered, would show why they cannot build to that side. To me then it becomes defensible.

Serocki: If they built to the back they would have to take down a tree, move the electrical, and they did not self- create this. If they go through the side, they may possibly have problems getting in to the driveway. I do not think that they self-created this issue.

Cowall: When you look at self-creation the only reason they are here is because of the plans they have drawn up. Their desire to bump the garage out closer to the road, then in my mind the set back is completely self-created. It is not a condition of the site. If they do not do this addition, they have not prevented themselves from living there; they have not diminished the value of the property. They have not been barred from enjoying the same rights as their neighbors have the right to enjoy. And the fact that there are other areas on the lot that you can move this out to, I always look at these variance requests with the question what are your options. They have the option to move back. The cost for doing this is not part of our ordinance.

Vida: What is the easiest and most reasonable way to meet the applicant's request? So does the board think Condition b has been met or not met?

Serocki: Condition b has been met.

Soutar: This hinges on the status of the drainage ditch on the side and if this is a pre-existing condition that cannot be overcome, then I would say it is not self-created. If it can be overcome or it is possible to go in that direction, then it is self-created.

Cowall: I cannot get past the first two. The other four are met. If the issue on the drainage ditch could be satisfied would I change my mind? No. There are other options available to the applicant. It seems to me with different plans there would not be an issue with the set-back.

Soutar: When did you know that this setback was a problem?

Zelinski: The plans were already done and we did not know we had a problem until we went to Grand Traverse and got the topographic maps. When they came out we measured with tape and did not figure the arc was that big. It was hard to know where to measure from the road. We

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figured that it was just 5 feet. We thought that the improvement of the look of the house would benefit our neighbors.

Soutar: Would the board be willing to set this aside if the issue of the drainage ditch cannot be resolved and would impede building in that direction; then it would be easy to make the case for approval. I would give that extension if that is what the board would decide.

McBride: As there are other solutions available, then I would have to say this is self-created.

Vida: Requested the board go through the other aspects of the variance ordinance, which was done.

Vida: I would be consider to withdraw my motion if the applicant is will to go through the process to determine the water run-off and should the garage be expanded to the west versus trying to expand the property as requested?

Zelinski: We would have to put in a retaining wall to not disturb the ditch and the part about getting into the garage from that direction-the more we go that way the more driveway we would need to add.

Action-Motion - Vida makes a motion to approve the variance as all 6 conditions have been met due to size, configuration, and shape of the lot. Serocki second. Roll call vote taken.

Yes: Serocki, Vida

No: McBride, Cowall, Soutar

Vida: Procedurally how do we proceed with this? Do we ask for another motion?

Deeren: This did not pass, but you can make another motion.

Soutar: Makes a motion to grant the applicant an extension to provide further information for the drainage ditch on the west side.

Cowall: What kind of evidence would we need and what would need to be investigated? Would we need an engineering report?

Zelenski: The drainage ditch is right on the property line where the center of the swale is. There is no encroachment. There will be ways to deal with the drainage. An engineering report would say there are ways to do it.

Action-Motion Cowall makes a motion that the application be denied based upon not meeting Basic Conditions a and b. McBride seconds. Roll call vote taken.

Yes: McBride, Cowall, Soutar

No: Vida, Serocki

Motion is passed. **Variance is denied.**

B. Request from Bruce and Angela Jensen for approval of liquor license

Vida: Asks Deeren why there is no request number of Business item B,

Deeren: The applicants wanted to go before the Township Board. I talked with the attorney and he recommended starting here. Because this came in so late, I wanted you to look at the information, listen to the applicants, and see where this needs to go. Soutar has information from 2010, which is in the packet. Believes this is not a new use and is an historical use. Liquor licenses are hard to get and based on the population of the community, I want to get the ball rolling for them to be the first. Does not know if anything was ever done in 2010 or it just fell off the agenda. Requests the applicant to make their statement.

Angela Jensen 18599 Mission Road We just became aware that there is an available liquor license and we want to know who is entitled to this license. With our strict zoning out here there are not that many people who are qualified. The Inn was built in 1869 and we are the fourth owners. In 2000 we obtained a permit for a restaurant. We have eased in slowly doing controlled events such as wedding receptions. The DNR has just approved a boat launch nearby and this seems like the perfect time to obtain this license. The liquor control officer has been out twice and said this is the perfect place and recommended that we should pursue obtaining the license.

Soutar: The minutes from the Zoning Board of Appeals dated August 12, 2010 contains that there was a request to obtain the attorney's opinion and have this discussed at the September 9, 2010 meeting. There is no record of this going any further. This board does not have the authority to adjudicate something we have not asked to adjudicate.

The board discussed historical documents, grandfathering, the history of the restaurant approval, and requested more information for the next meeting. Need to determine next steps.

Deeren: I will call the attorney Greg Meihn on Monday April 16, 2018 and find out what the next steps are going forward. I understand that time is of the essence in this matter. I will let you know what your next steps are. This is where I believe this issue should be.

C. Action-Motion -Approval of Minutes of November 9, 2017 Meeting Cowall made a motion and Serocki second to approve the minutes as amended. **PASSED UNAM**

Public Comments NONE

Board Comments

Serocki: Gave a Planning Commission report. Currently working on the third draft of the zoning ordinance and the hope is when it is done, the document automatically goes back to McKenna and that will be used for public information. Worked on the enforcement policy, which was passed by the Township Board and working to determine the time between a written notice and a citation. We worked on a flood plan amendment and this is going to be discussed at a Township meeting. There is concern because of some language on wetlands and this may need to be removed. The only language about the wetlands is under condo sub-divisions. We are taking away the ZBA's approval on fill and that will go to Zoning or the Planning Commission.

Commission worked on some escrow language as the Treasurer has some people who are want

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~~to bring their escrow accounts up to date and the township is~~ in the red with ~~their those~~ accounts. ~~The Planning Commission and then we sent it to~~ The Township Board ~~who~~ did not approve ~~the flood plain amendment as they did not believe the wetland language belonged there.~~ ~~of this move and did not believe the wetlands language belonged there.~~ We modified the wetland language and improved it and used the same sequencing so it is very obvious that you cannot fill without permitted use. You cannot build on something that was built 10 years ago. There is concern that the wetland and flood plain issues are separate. The attorney Meihn thought that the ~~flood plain wetland~~ would be covered by the condo subdivision language. Meihn stated he wanted that in the record, which ~~we did~~ it was.

Deeren: I have requests on my desk that we cannot approve. I have two people with the 25 foot setback and the properties are side by side and both people want to improve their properties. There is a stream running down between the two properties. One is already approved and he wants to add on a garage. This is 13 feet from the creek and I made him do a **PDA DEQ**. The other property owner wants to put in a 10 x10 concrete feet slab pier system that culvert over the wetland area. It is hard to believe that structure would stand very long. So we need to get the Township Board to understand why that information needs to put in there as well.

Adjournment Cowall moves to adjourn. Vida second. Meeting ends at 8:25 PM

Lola Jackson

Recording Secretary