

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

13235 Center Road, Traverse City, MI 49686

August 20, 2019, 7:00 p.m.

1. **Call to Order** Soutar calls the meeting to order at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Wahl, Dolton, Soutar, McBride, Couture (absent), Deeren, Director of Zoning
4. **Approval of Agenda** Wahl moved to approve the agenda with a second by Dolton
PASSED UNAM
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None
7. **Business**

A. Request No. 875, Zoning R-1C

Applicant: Molly Albert, 13744 Peninsula Drive, Traverse City, MI 49686

Owner: Edward and Molly Albert, 13744 Peninsula Drive, Traverse City, MI 49686

Property Address: 13755 Peninsula Drive, Traverse City, MI 49686

1. Requesting a variance from the required; openings of more than fifty (50) percent of each one square yard of surface area for a fence and requesting a solid wood non-opened surface fence for privacy to be located on the southerly property line.
 2. Requesting a variance from the required four (4) feet in height for a fence to six (6) feet in height for a solid wood non-opened privacy fence to be located on the southerly property line.
- Parcel Code: #28-11-128-026-01

Edward and Molly Albert 13744 Peninsula Drive

On the south edge of our property we installed a fence over 4 feet tall to provide privacy for a hot tub we installed. In communication with our neighbor to the south, he had no objection to the fence. We built what we consider a tasteful fence and had no idea we needed a permit to install a fence on our own property. The fence does not block anyone's view.

Soutar: Did you have the property surveyed to make sure the placement of the fence was on your property?

Molly Albert: We went off the stakes on both corners of the property and then made a chalk line for the placement of the fence.

Soutar: On my site visit I did not see the stakes you are referring to. I did see a 1x2 stake.

Molly Albert: I did not know I needed to keep the stakes on my property and I removed them. We did pay the fine for the fence violation and the fee to apply for the variance.

Deeren: I have their check for the fine and if the variance is approved, I will give them the check back.

Wahl: I did see the stakes on my site visit.

Dolton: I also saw the stakes when I was there and the stakes appear to be on the applicant's side. How do you intend to maintain the fence without going on the neighbor's property?

Molly Albert: The fence is cedar and we put clear coat on both sides of the fence when it was installed.

Wahl: As the material weathers, how do you plan to maintain the fence?

Molly Albert: If we have to do this over, a maintenance free material would be used.

Soutar: There is an email from the neighbor stating their agreement for mutual maintenance of the fence.

Soutar: Is there anyone who wishes to speak in favor of the applicant? Hearing none, is there anyone who wishes to speak against the applicant? Hearing none the matter is returned to the board.

Dolton: The fence is not observable from the road. The applicant has been apologetic about not knowing the need for a permit of the fence. There is mutual agreement between the neighbors.

McBride: While these cases can be difficult, our role is to follow the written ordinances.

Wahl: I have 3 concerns. The fence is over 4 feet, coverage is more than 50%, and this may affect potential future owners of the home.

Soutar: The neighbor has agreed to the fence with the written email. This, however, might not be true for a future owner.

McBride: Past issues of fences over 50% coverage have been when the fence is blocking a view from a driveway turning onto a road and creating a safety issue. That is not the case here.

Wahl: My issue is that this is not due to a unique circumstance and is a self-created problem, which includes parts a and b under Section 5.7.3 (1) of the Basic Conditions for a Variance.

Dolton: I can understand the need for privacy. What could be another method of creating privacy?

Soutar: The applicant could use bushes or shrubs. Given the fence is currently near or at the property line, the neighbor would be entitled to trim vegetation on their side of the fence.

Deeren: The application was written as a request for a fence and that is what needs to be decided upon tonight. She then polled the board using the basic conditions for a variance.

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

a. 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.

Soutar, McBride, Wahl - **Condition has not been met.**

Dolton- **Condition has been met.**

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

Soutar, McBride, Dolton, Wahl **all agree condition has not been met.**

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.)

Soutar, McBride, Dolton, Wahl **all agree condition has been met.**

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.

Soutar, McBride, Dolton, Wahl **all agree condition has been met.**

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

Soutar, McBride, Dolton, Wahl **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.

Soutar, McBride, Dolton, Wahl **all agree condition have been met.**

Soutar: All 6 conditions must be met for us to approve this request. Item B was not met.

Action-Motion Wahl moved Request No. 875, Zoning R-1C be denied, second by Dolton.

Yes Soutar, McBride, Dolton, Wahl

No 0

PASSED UNAN

B. Request No. 876, Zoning R-1C

Applicant: Laurie Walker, 626 N. State St., St. Ignace, MI 49781

Owner: Laurie Walker and Ellen Exworthy, 626 N. State St., St. Ignace, MI 49781

Property Address: 6518 East Shore Road, Traverse City, MI 49686

1. Requesting a variance from the required front yard setback of 25 feet to 1 foot in order to construct a detached garage 18 feet by 20 feet and a covered porch 65 sq. ft.
Parcel Code: #28-11-031-028-00

Laurie Walker 6518 East Shore Road
Ken Richman Architect 819 S. Elmwood

Richman: I am an architect representing the applicant. The property is a legal non-conforming lot. The garage was removed per a variance in 1989. We are requesting to construct a small, detached garage 18 x 20 feet and a covered porch of 65 sq. feet. The garage will be close to the house with a breezeway. This is a unique property where the street and water setbacks overlap. The garage design is consistent with the house and compatible with the neighborhood architecture. The garage will reduce the space cars occupy on the street and reduce clutter.

Deeren: How many feet are between the house and proposed garage?

Richman: 6 feet

Deeren: My concern is where the sewer line is located. What would happen if damage to that pipe occurred and the garage was built over that sewer line?

Wahl: When was the house removed from a septic system and connected to the sewer? My concern is during my site visit there appeared to be a mound where the proposed garage was going to be. This might be a septic system remnant as there was an oversized manhole cover.

Deeren: We need to know how deep that pipe is buried. There is a manhole cover there. This needs to be investigated.

McBride: How many feet from the road right of way?

Deeren: 33 inches is the road right of way and then they need another 25 inches, which puts this just within the road right of way. With fiber optics and gas lines being run along the road, this could prove to be a problem. One thing to remember is that this is a one story house. They could go up and not expand non-conformity, but if they go out, this increases the non-conformity of the property. The previous owner had to come in for a variance as there was an existing garage. They did not feel the house was big enough and the garage was converted into living space.

Soutar: Is there anyone who wishes to speak in favor of the applicant?

Nancy Heller 3091 Bluewater Rd.

Just for the sake of clarification, does the utility have to be provided with this information?

Deeren: Not that I know of.

Soutar: Is there anyone who wishes to speak against the applicant? Hearing none the matter is returned to the board.

Soutar: The past variance was to take out the garage and create additional space. There was the option at that time of adding on to the house by adding space on a second floor, which would not have needed a variance. Now we are being asked to consider another variance to rebuild a garage.

Wahl: On my site visit there was an oversized man-hole cover. This made me wonder if there was still a septic tank there. I would like to know where that sewer line runs. If a pipe broke under the garage, there would not be an easy way to get to the pipe.

Dolton: The ordinance defines what appropriate and required setbacks are and this garage would almost be on the line.

McBride: I am also concerned about the issue of how close this is to the setback requirement.

Deeren: Polled the board regarding the six basic conditions.

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

a. 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.

Soutar, McBride, Wahl, Dolton **all agree condition has not been met.**

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

Soutar, McBride, Dolton, Wahl **all agree condition has not been met.**

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.)

Soutar, Dolton **agree condition has not been met.**

Wahl, McBride **agree condition has been met.**

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.

Soutar, McBride, Dolton, Wahl **all agree condition has been met.**

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

Soutar, Dolton, Wahl agree **condition has been met.**

McBride- **Condition has not 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.

Soutar, McBride, Dolton, Wahl **all agree condition have been met.**

Soutar: All 6 conditions must be met for us to approve this request.

Action-Motion Wahl moves that that Request No. 876, Zoning R-1B be denied, second by McBride.

Richman: Could you make this contingent on where the sewer line is?

Walker: Could we have time to explore the option of building up?

Soutar: You would not need a variance to build up.

Board discusses options if motion is voted down and a new motion is made to defer the vote with a date certain to give the applicant time to explore feasibility of building up and where the sewer line runs.

Yes- 0

No- Soutar, McBride, Dolton, Wahl

NOT PASSED

Action-Motion Dolton moved that this case be moved to a date certain of September 17, 2019 to allow the applicant time to explore the option of building up. McBride seconds. Wahl amends the motion to include research into the septic system and sewer piping that runs across that area of the property. McBride seconds.

Yes- Wahl, Dolton, McBride, Soutar

PASSED UNAM

C. Request No. 877, Dual Zoning A-1 and R-1B

Applicant: James L. Schroeder, 11594 Peninsula Drive, Traverse City, MI 49686

Owner: James L. and Elizabeth Schroeder, 11594 Peninsula Drive, Traverse City, MI 49686

Property Address: 11594 Peninsula Drive, Traverse City, MI 49686

1. Requesting use of structure for temporary dwelling as outlined in Section 7.2.1 of the Peninsula Township zoning ordinance.

Parcel Code: #28-11-005-025-03

James and Elizabeth Schroeder
11594 Peninsula Drive

We are adding on and remodeling a home at 11594 Peninsula Drive. We still reside in Pennsylvania and are requesting a temporary dwelling permit for a 24 foot trailer to be placed temporarily on the property. I will be here 7-14 days per month supervising the work. I will also have a car located here.

Wahl: Are you are retired?

Schroeder: Yes

Deeren: How long do you estimate it will take for you to obtain an occupancy permit?

Schroeder: We are expecting to able to live in the home by November or December of this year.

Deeren: One of the neighbors said he had no issue with a short term situation but would not want the situation to become long term.

Soutar: Has the water line has been installed?

Schroeder: Yes, we had a new well drilled and permitted last year.

Soutar: Do you have a sewer connection?

Schroeder: We have temporary porta-a-potty that is serviced weekly. The trailer itself is self-containing for gray water and that can be emptied by the sanitation company as well.

Dolton: Has the electrical panel been inspected by an electrician?

Schroeder: This was installed by an electrician.

Soutar: Is there anyone who wishes to speak in favor of the applicant? Is there anyone who wishes to speak against the applicant? Hearing none the matter is returned to the board.

McBride: Should we put a time limit for this temporary trailer?

Deeren: I would recommend that if you want to do this, include it with the motion.

Dolton: The property owner does not live in the area. This may prove to be a hardship.

Deeren: There are no conditions to be met. The way the law reads as outlined in Section 7.2.1 of the zoning ordinance this is the governing body to issue this approval.

Action-Motion Wahl moved that the temporary dwelling be approved through November 30, 2019 with a second by McBride.

Yes- Wahl, Dolton, McBride, Soutar

PASSED UNAM

8. Approval of Minutes from May 21, 2019

Action-Motion Wahl moved that the minutes from May 21, 2019 be approved with a second by Dalton.

Yes- Wahl, Dolton, McBride, Soutar

PASSED UNAM

9. Citizen Comments

Nancy Heller 3091 Bluewater Rd.

I have a lot of road front property. Acentek is running a fiber optic line. DTE has put in gas. Acentek used a utility easement, while DTE is using the road right of way as an easement. I do not think a utility easement is a blanket granting to a utility. As you are deciding these cases on a case-by-case basis, I do not know where you go to find out who has a utility easement or a road right of way easement. I think research should be done by the zoning board.

Deeren: It could be if there is a sewer line that goes through a property, the utility could have a 10 foot easement. If there is a line and the city is doing the maintenance, there is a possibility of an easement. Center Road has a 75 foot easement by the Michigan Department of Transportation (MDOT).

10. Board Comments

Wahl: Bowers Harbor Vineyard was approved for the 10 Dining in the Vines.

Deeren: They also were approved for Chateau status contingent upon making the driveway big enough for a fire truck to turn around and several other conditions. They are still operating under their SUP 32 amendment 2 until those items are completed.

11. Adjournment Wahl moved to adjourn. McBride seconded.

PASSED UNAM

Adjourned at 8:27 p.m.