

**PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
AGENDA**

13235 Center Road
Traverse City, MI 49686
August 11, 2016
7:00 p.m.

1. **Call to Order**
2. **Pledge**
3. **Roll Call of Attendance**
4. **Approval of Agenda**
5. **Conflict of Interest**
6. **Communication Received**
7. **Brief Citizens Comments – for items not on the Agenda**
8. **Scheduled Public Hearings**

A. Request No. 853, Zoning R-1C

Applicant: Daniel & Margaret Casey, 7002 Peninsula Drive, Traverse City, MI 49686

Owner: Daniel & Margaret Casey, 7002 Peninsula Drive, Traverse City, MI 49686

Property Address: 7002 Peninsula Drive, Traverse City, MI 49686

Requests: (1) a variance of up to 9 feet from the 30 foot rear yard setback requirement to allow for the construction of a detached garage; and (2) a variance of up to 9 feet from the 15 foot side yard setback requirement to allow for the construction of a detached garage.

Parcel Code No. 28-11-325-085-00

B. Request No. 854, Zoning R-1B

Applicant: Joseph & Felicia Manhart, 2959 Mona Lisa Blvd, Naples, FL 34119

Owner: Joseph & Felicia Manhart, 2959 Mona Lisa Blvd, Naples, FL 34119

Property Address: 13415 Bluff Rd., Traverse City, MI 49686

Requests: (1) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (2) a variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (3) a variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (4) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (5) a variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

Parcel Code No. 28-11-420-021-00

9. Approval of Minutes

- A. June 23, 2016 Special Meeting

10. Old Business

- A. Request No. 847, Interpretation (Adjourned from June 23, 2016)
Peninsula Township Zoning Administrator requests interpretation of Section 8.7.3 (10) (u) - What constitutes a "guest activity use" as opposed to what is allowed in the tasting room of a Winery Chateau without a guest activity use permit?

11. New Business

- A. Township Board Report (Witkop)
- B. Planning Commission Report (Wunsch)

12. Adjournment

Peninsula Township has several portable hearing devices available for audience members. If you would like to use one, please ask the Clerk.

**PENINSULA TOWNSHIP ZONING BOARD OF APPEALS
SPECIAL MEETING
June 23, 2016**

Meeting called to order at 7:00 pm

Present: **Wunsch; Soutar; Vida-Chair; Cowall; Witkop**. Also present were Claire Schoolmaster, Planning and Zoning Administrator; Michelle Reardon, Director of Planning and Zoning, Peter Wendling, Township Attorney and Mary Ann Abbott, Recording Secretary.

Absent: None

Approval of Agenda

Reardon requests that Public Hearing Request No. 851 be removed from the agenda as the applicant has withdrawn.

MOTION: Soutar/Wunsch to approve the agenda as amended.

PASSED UNAN

Conflict of Interest

None

Communication Received

None

Brief Citizens Comments – for items not on the Agenda

None

Scheduled Public Hearings

A. Request No. 851, Zoning A-1 (Adjourned from June 23, 2016)

Applicant: Burkholder Construction c/o Scott Wright, 2206 Cass Rd., Traverse City, MI 49684 Owner: Mary Ann & Mario Tabone, 379 Red Ryder Dr., Plymouth, MI 48170

Property Address: 14998 Peninsula Dr., Traverse City, MI 49686

Request: (1) a variance of 11 feet 2 inches (11' 2") from the required 100 foot (100') side yard setback to allow for the construction of a farm processing facility structure.

Parcel Code Nos. 28-11-122-010-00

Applicant has withdrawn Request No. 851

B. Request No. 847, Interpretation (Adjourned from June 23, 2016)

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.3 (10) (u) – What constitutes a “guest activity use” as opposed to what is allowed in the tasting room of a Winery Chateau without a guest activity use permit?

Reardon this request is a Zoning Administration request for an interpretation of our ordinance. All of the language surrounding Winery-Chateau has been given to the Zoning Board.

The Zoning administration is looking for an interpretation for what can occur in a tasting room of a winery/chateau outside of that guest activity use.

Section 8.7.3(10)(u) 1(d) states “ Guest Activity Uses do not include wine tasting and such related promotional activities as political rallies, winery tours and free entertainment (example-Jazz at Sunset) which are limited to the tasting room and for which no fee or donation of any kind is received.

Wendling one of the biggest issues is the wording “ which no fee or donation of any kind is received”. What are the restrictions of that compensation? This is the biggest issue before us. What Wendling would like to see from the ZBA tonight is: What

Peninsula Township
Zoning Board of Appeals

June 23, 2016

constitutes a donation or fee that keeps it out of being a guest activity and keeps it within the realm of what is allowed as of an accessory for winery/chateau?

Further discussion occurred by the Zoning Board including comments of the limiting wineries as an event space; compensation received by winery for an event; functions of winery or B& B; focus needing to be related to wine tasting; intentions to promote agricultural use of Old Mission Peninsula; not allowing use of a facility to take donations; not meant to be an event space; all spaces open to public.

Public Hearing opened at 7:36 pm.

Donald Coe, 211 Midtown has had a winery on Old Mission Peninsula, served on the Grape and Winery Counsel and the Michigan Agricultural Commission spoke of the issues of wineries always on the agenda. Offered some primary issues to consider: different classes of wineries; remembering that there are other agencies that regulate wineries and other authorities may already be enforcing and licensing; and the fact that it is a small number of wineries and that tasting rooms are essential to the economic health of the winery. Mr. Coe offered assistance to the Zoning Administrator.

Mark Nadolski, 10 McKinley, President of Protect the Peninsula was heavily involved with the wineries ordinances going back over a decade. Old Mission Peninsula is unique so we cannot be treated like other wineries. Events were a battle. The whole intention was to promote the agriculture of the peninsula. It was not to have parties or weddings; it was created to promote agriculture. Wine by the glass was introduced to avoid people drinking free wine without buying anything. Wine and cheese was offered to temper the effects of the wine. Agrees that there should not be a charge for events. Appreciates the efforts of the Zoning Board tonight.

No further comments from the public. Public Hearing closed at 8:18 pm.

Wendling In the provision under D "no fee or donation of any kind is received", is that only in respect to the winery or does "fee and donation of any kind" mean any organization that is attending the event at the winery or the winery itself.

Wunsch could Wendling draft up two or three alternative motions so that we are sure our language is precise?

Reardon is there a consensus by the Zoning Board that the fees or donations mentioned are not just the winery but also the group that is gathering at the winery. There was a consensus by the Zoning Board that they agreed with this.

Reardon would also like to bring up the idea of closing off portions of the tasting room. Consensus of the Zoning Board that all portions of the tasting room will be open to the Public.

Suggestion is that we now direct the Attorney to draft the motions. **Wunsch** no charges other than the normal use of the tasting room. The tasting room open to the public. No upcharges.

MOTION: Wunsch/Cowall to table Request No. 847.

PASSED UNAN

C. Request No. 848, Interpretation (Adjourned from June 23, 2016)

Peninsula Township Zoning Administrator requests interpretation of Section 8.7.2 (3) and Section 8.7.3 (3) - What uses/activities are allowed as part of a special open space use as provided under the Ordinance?

Reardon Staff is looking to the ZBA for interpretation not to set policy. Section 8.7.2 (3) permits "Special Open Space uses, such as public beaches, bath houses, recreational camps and other open space uses operated for profit within any agricultural zone district" as a use permitted by Special Use Permit.

This suggests that open space is outside of a structure.

Section 8.7.3 (3) regulates Special Open Space Uses:

(a) The proposed site shall be at least two (2) acres in area.

(b) The proposed site shall have at least one (1) property line abutting a major or secondary thoroughfare. All ingress and egress to the site shall be directly from said thoroughfares.

(c) All buildings and structure shall be set back at least two hundred (200) feet from any property or street line. Whenever the installation abuts upon property within a residential district, this two hundred (200) foot setback shall be landscaped with trees, grass and structural screens of a type approved by the Township Board to effectively screen the installation from surrounding residential properties.

(d) No more than twenty-five (25%) percent of the gross site shall be covered by buildings.

Reardon An application that was later withdrawn brought to light that this ordinance might be interpreted differently.

Wending In clarification the term building envelope talks about the setback area. The building envelope is not the building but the area in which a building could be placed without violating any setbacks.

Wunsch Can we deal with this in a zoning ordinance rewrite? He would rather take a restrictive approach?

Wending Question is what direction is the Township going. Is the open space concentrated in the outside area or is it primarily being utilized by the structures. It may be a policy issue and a clean up of the language, included accessory structures allowed. If the ZBA does not like this language it can request that it is tightens down the use of accessory structures.

Reardon states that if there were an interpretation it would be that specific. Is this a use that occurs principally outside and structures can be used only to accessory to the outside event.

Public Hearing on Request No. 848 opened at 8:54 pm

Marie Dalese, 527th Second, CEO of Chateau Chantal reminds ZBA that Guest Use activities of Winery /Chateau not being allowed to have wedding or tent and tied to produce of Old Mission Peninsula. Just reiterating the discrepancy between the two. It is a problem but not your intent. Should not discriminate who is attending events. There are limitations on impact.

Marilyn Elliott, 18811 Whispering Trail is failing to understand why it is not possible for you to make the interpretation now to say it has to be principally outside of the structure and say no party barns or event venues. Simple request that could be simply done.

Todd Oosterhouse, 7700 Peninsula Drive wonders about open space - so if I have two acres I can have an event or wedding and how does this tie back to Master Plan for protecting agricultural. Whereas those that have wineries or fruit stands have to have vast amounts of acreage just to sell our goods.

No further public comments. Closed at 8:58 pm.

Witkop I think we are missing something. I think this was intended for perpetual uses not an occasional event.

Wunsch respond to public comment. It is worthwhile to have a policy body review the ordinance. This is not a policy board but we should interpret and report back to the PC or the Board to take a look at cleaning it up

MOTION: Wunsch/Soutar that the buildings as defined in subsection C and D of section 8.7.3(3) of our Ordinance refers to accessory buildings to the primary use.

PASSED UNAN

Approval of Minutes

A. June 9, 2016 Regular Meeting

Vida on page 22 numbering sequence is off. Page 24 Motion should read; Wunsch/Soutar Special condition #3

MOTION: Soutar/Wunsch to accept June 9, 2016 minutes as amended.

PASSED UNAN

New Business

Township Board Report (Witkop)

No report

Planning Commission Report (Wunsch)

No Report

MOTION: Wunsch/Witkop to adjourn at 9:09 pm.

PASSED UNAN

Respectfully submitted by Mary Ann Abbott, Recording Secretary

LEGAL NOTICE

PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
NOTICE OF HEARING

PLEASE TAKE NOTICE that the Peninsula Township Zoning Board of Appeals will hold a regular meeting on August 11, 2016 at 7:00 PM at the Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686, (231) 223-7322. The following applicants will be heard:

1. Request No. 853, Zoning R-1C

Applicant: Daniel & Margaret Casey, 7002 Peninsula Drive, Traverse City, MI 49686

Owner: Daniel & Margaret Casey, 7002 Peninsula Drive, Traverse City, MI 49686

Property Address: 7002 Peninsula Drive, Traverse City, MI 49686

Requests: (1) a variance of up to 9 feet from the 30 foot rear yard setback requirement to allow for the construction of a detached garage; and (2) a variance of up to 9 feet from the 15 foot side yard setback requirement to allow for the construction of a detached garage.

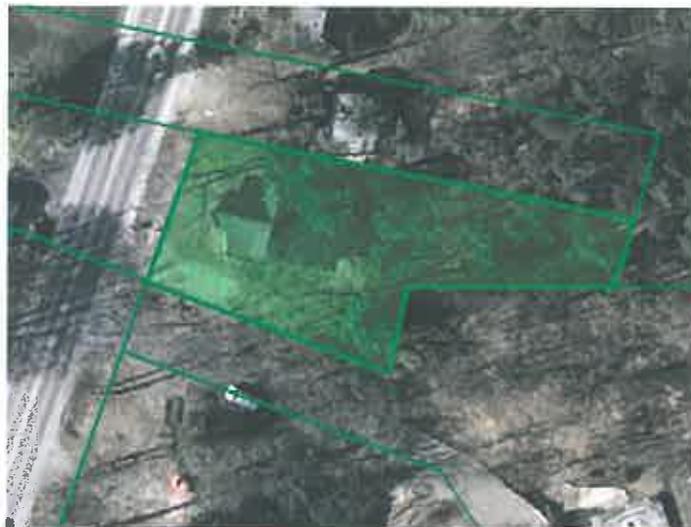
Parcel Code No. 28-11-325-085-00

Please be advised that the public may appear at the public hearing in person or by council.

Written comment may be submitted to Peninsula Township Planning & Zoning Department at 13235 Center Rd., Traverse City, MI 49686 no later than 4:30 PM on the date of the hearing.

If you are planning to attend the meeting and are disabled requiring any special assistance, please so notify the Planning & Zoning Department at (231) 223-7322 or call TDD at (231) 922-4766.

SUBJECT PROPERTY



Peninsula Township Planning & Zoning Department
STAFF REPORT

ZBA Request #853 – 7002 Peninsula Drive
August 11, 2016

To: Peninsula Township Zoning Board of Appeals
From: Claire Schoolmaster, Planning & Zoning
RE: Request No. 853 – 7002 Peninsula Drive
Hearing Date: August 11, 2016 – 7:00 PM
Applicant: Daniel & Margaret Casey, 7002 Peninsula Drive, Traverse City, MI 49686
Site: 7002 Peninsula Drive, Traverse City, MI 49686
Tax IDs: 28-11-325-085-00

Information:

- Parcel 28-11-325-085-00 is approximately 0.3 acres in size.
- The property is zoned Suburban Residential Single and Two-Family (R-1C); the surrounding area is also zoned Suburban Residential Single and Two-Family (R-1C).
- The lot was created before the adoption of the Peninsula Township Zoning Ordinance, and is considered non-conforming.
- The lot approximately 12,760 square feet and the minimum area for a parcel in the R-1C zoning district is 20,000 square feet.
- The residential structure located on the property was built in 1900 and is conforming.
- There is a building envelope located on the lot.
- The proposed attached garage requires a rear yard setback variance of up to 9 feet from the required 30 feet.
- The proposed attached garage requires a side yard setback variance of up to 9 feet from the required 15 feet.

Action

Requested: (1) a variance of up to 9 feet from the 30 foot rear yard setback requirement to allow for the construction of a detached garage; and (2) a variance of up to 9 feet from the 15 foot side yard setback requirement to allow for the construction of a detached garage.

Mailing: Twenty (20) surrounding property owners were notified. No comments were received as of August 4, 2016.

Applicant

Statement: Please see the enclosed application submitted by Daniel & Margaret Casey, property owners.

Staff Comments:

Request #1 & 2

The applicant is requesting variances for the construction of an attached two car garage.

Background

The existing single family residence was built in 1900. Due to the topography and shape of the lot variances are needed to construct an attached 2 car garage.

The proposed residential addition conforms to relevant zoning standards for minimum lot setbacks of the front and north side yard, but does not conform to the minimum rear yard and south side yard setback restrictions as demonstrated in the following table:

R-1C Standards (Section 6.8)	Required	Proposed Garage	Variance	Conforms to Standard?
Minimum Front Setback	25'	54'	NA	Yes
Minimum South Side Setback	15'	6'	9'	No
Minimum North Side Setback	15'	47.5'	NA	Yes
Minimum Rear Setback	30'	21'	9'	No
Minimum OHWM Setback	NA	NA	NA	NA

The applicant requests (1) a variance of up to 9 feet from the 30 foot rear yard setback requirement to allow for the construction of a detached garage; and (2) a variance of up to 9 feet from the 15 foot side yard setback requirement to allow for the construction of a detached garage. The requested variance must meet the following standards in order to be granted. Specific staff comments follow the standards.

A. Section 3.2 Definition of Practical Difficulty

To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating all of the following:

- a) 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.
- b) 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.
- c) The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

B. Section 5.7.3 Variances

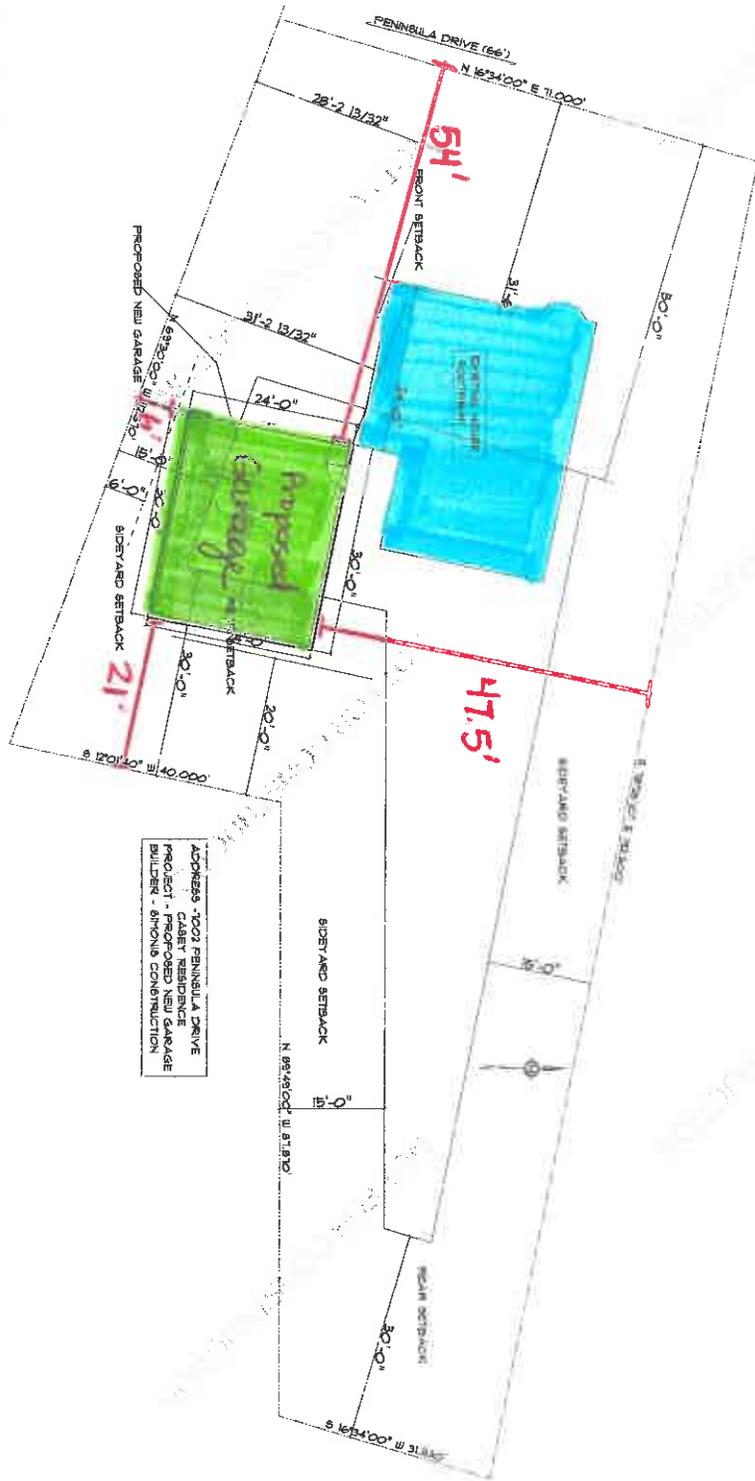
The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED ALL of the BASIC conditions listed herein and any ONE of the SPECIAL conditions listed thereafter can be satisfied.

- 1) Basic Conditions: That any variance from this Ordinance:

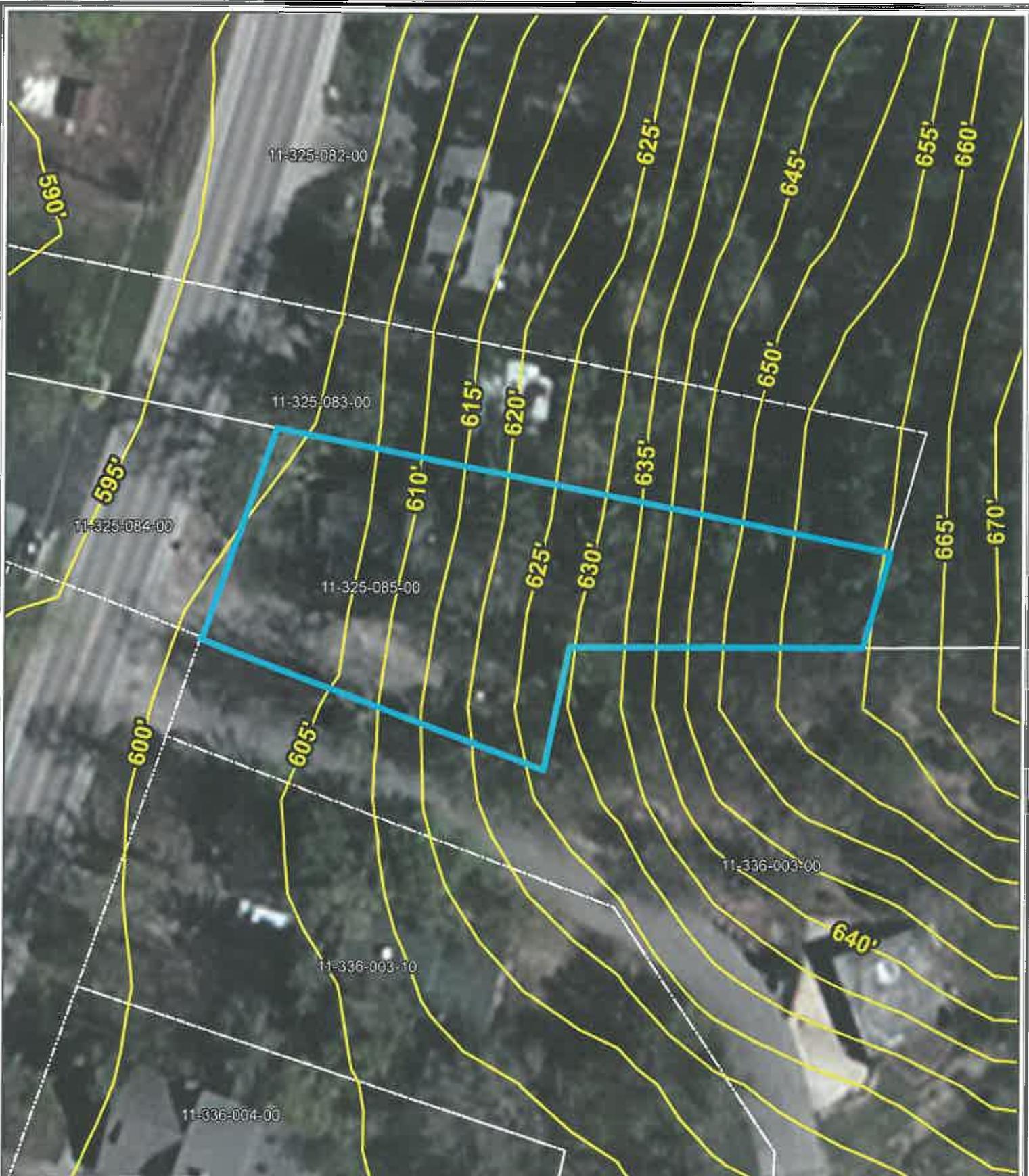
- a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.
 - b. Shall not permit the establishment within a district any use which is not permitted by right, under special conditions, or by special use permit within that zone district, or any use or dimensional variance for which a conditional use permit is required.
 - c. 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.
 - d. 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.
 - e. Will relate only to the property that is under control of the applicant.
- 2) Special Conditions: When ALL of the foregoing basic conditions can be clearly demonstrated:
- a. 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.
 - b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.
 - c. 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.
 - d. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

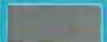
The subject property, zoned R-1C, was created before the effective date of the Ordinance and considered non-conforming. The width is approximately 71 feet and the length is approximately 192.5 feet.

MAIN FLOOR
SCALE: 1/8" = 1'-0"

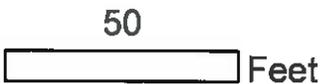


ADDRESS: 7002 PENINSULA DRIVE
PROJECT: PROPOSED NEW GARAGE
BUILDER: BYRON'S CONSTRUCTION



-  Contour Lines
-  Parcel of Interest
-  Peninsula Twp Parcels

Topographic Overlay
PIN: 28-11-325-085-00



Peninsula Township
 Grand Traverse County
 Michigan



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Peninsula Township Planning & Zoning Department
FINDINGS OF FACT

ZBA Request #853 – 7002 Peninsula
August 11, 2016

DECISION AND ORDER

Applicant: Daniel & Margaret Casey, 7002 Peninsula Drive, Traverse City, MI 49686

Hearing

Date: August 11, 2016

PROPERTY DESCRIPTION

The property of 7002 Peninsula Drive, Traverse City, MI 49686, Parcel No. 28-11-325-085-00 herein after referred to as the “property”.

APPLICATION

Requests: (1) a variance of up to 9 feet from the 30 foot rear yard setback requirement to allow for the construction of an attached garage; and (2) a variance of up to 9 feet from the 15 foot side yard setback requirement to allow for the construction of an attached garage.

The Board having considered the Application, a public hearing having been held on August 11, 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 four (4) 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 Suburban Residential Single and Two-Family (R-1C). (Exhibits 1, 2)
2. The Board finds that the lot was created before the adoption of the Zoning Ordinance and is non-conforming. (Exhibit 1, 2)
3. The Board finds that the lot approximately 12,760 square feet and the minimum area for a parcel in the R-1C zoning district is 20,000 square feet. (Exhibit 1, 2, 3)
4. The Board finds that the proposed attached garage does not conform to relevant zoning standards. (Exhibits 2, 3, 4)
5. The Board finds that there is a building envelope located on the property. (Exhibits 1, 2)
6. The Board finds that the applicant requests a variance of up to 9 feet from the 30 foot rear yard setback requirement to allow for the construction of an attached garage. (Exhibit 3)
7. The Board finds that the applicant requests a variance of up to 9 feet from the 15 foot side yard setback requirement to allow for the construction of an attached garage. (Exhibit 3)

Variance Request #1 A variance of up to 9 feet from the 30 foot rear yard setback requirement to allow for the construction of an attached garage.

FINDINGS UNDER SECTION 5.7.3 VARIANCES OF THE ZONING ORDINANCE

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

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

1. 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.

The following findings may support this standard HAS been met.

- a. The Board finds that the parcel is has a unique shape and was created before the effective date of the Zoning Ordinance (Exhibit 4).
- b. The Board finds that the parcel is nonconforming. The total area is approximately 12,760 square feet, and the minimum area for a parcel in the R-1C zoning district is 20,000 square feet. (Exhibit 1, 2, 3)
- c. The Board finds that the property has unique topography with a steep slope in the rear yard. (Exhibit 3, 4)
- d. The Board finds that

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

- a. The Board finds that the property is zoned Suburban Residential Single and Two-Family (R-1C). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the existing retaining wall does not comply with the rear yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the lot. (Exhibit 1, 2)
- d. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that the parcel is has a unique shape and was created before the effective date of the Zoning Ordinance (Exhibit 4).

- b. The Board finds that the parcel is nonconforming. The total area is approximately 12,760 square feet, and the minimum area for a parcel in the R-1C zoning district is 20,000 square feet. (Exhibit 1, 2, 3)
- c. The Board finds that the property has unique topography with a steep slope in the rear yard. (Exhibit 3, 4)
- d. The Board finds that

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

- a. The Board finds that the property is zoned Suburban Residential Single and Two-Family (R-1C). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the existing retaining wall does not comply with the rear yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the lot. (Exhibit 1, 2)
- d. The Board finds that

This standard HAS / HAS NOT been met.

- 3. That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)

The following findings may support this standard HAS been met.

- a. The Board finds that the parcel is has a unique shape and was created before the effective date of the Zoning Ordinance (Exhibit 4).
- b. The Board finds that the parcel is nonconforming. The total area is approximately 12,760 square feet, and the minimum area for a parcel in the R-1C zoning district is 20,000 square feet. (Exhibit 1, 2, 3)
- c. The Board finds that the property has unique topography with a steep slope in the rear yard. (Exhibit 3, 4)
- d. The Board finds that

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

- a. The Board finds that the property is zoned Suburban Residential Single and Two-Family (R-1C). According to Section 6.2.2(2)(a) an accessory structure is a use

by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)

- b. The Board finds that the existing retaining wall does not comply with the rear yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the lot. (Exhibit 1, 2)
- d. The Board finds that

This standard HAS / HAS NOT been met.

- 4. That the variance will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

The following findings may support this standard HAS been met.

- a. The Board finds that the parcel is has a unique shape and was created before the effective date of the Zoning Ordinance (Exhibit 4).
- b. The Board finds that the parcel is nonconforming. The total area is approximately 12,760 square feet, and the minimum area for a parcel in the R-1C zoning district is 20,000 square feet. (Exhibit 1, 2, 3)
- c. The Board finds that the property has unique topography with a steep slope in the rear yard. (Exhibit 3, 4)
- d. The Board finds that

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

- a. The Board finds that the property is zoned Suburban Residential Single and Two-Family (R-1C). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the existing retaining wall does not comply with the rear yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the lot. (Exhibit 1, 2)
- d. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that generally proposed garage is unlikely to cause adverse impacts of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b. The Board finds that

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

- a. The Board finds that

This standard HAS / 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.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Suburban Residential Single and Two-Family (R-1C). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district. (Exhibits 1, 2)
- b. The Board finds that

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

- a. The Board finds that the property is zoned Suburban Residential Single and Two-Family (R-1C). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the existing retaining wall does not comply with the rear yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the lot. (Exhibit 1, 2)
- d. The Board finds that

This standard HAS / HAS NOT been met.

VARIANCE REQUEST # 1 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of up to 9 feet from the 30 foot rear yard setback requirement to allow for the construction of an attached garage.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

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

Variance Request #2 A variance of up to 9 feet from the 15 foot side yard setback requirement to allow for the construction of an attached garage.

FINDINGS UNDER SECTION 5.7.3 VARIANCES OF THE ZONING ORDINANCE

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

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

1. 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.

The following findings may support this standard HAS been met.

- a. The Board finds that the parcel is has a unique shape and was created before the effective date of the Zoning Ordinance (Exhibit 4).
- b. The Board finds that the parcel is nonconforming. The total area is approximately 12,760 square feet, and the minimum area for a parcel in the R-1C zoning district is 20,000 square feet. (Exhibit 1, 2, 3)
- c. The Board finds that the property has unique topography with a steep slope in the rear yard. (Exhibit 3, 4)
- d. The Board finds that

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

- a. The Board finds that the property is zoned Suburban Residential Single and Two-Family (R-1C). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)

- c. The Board finds that there is a building envelope located on the lot. (Exhibit 1, 2)
- d. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that the parcel is has a unique shape and was created before the effective date of the Zoning Ordinance (Exhibit 4).
- b. The Board finds that the parcel is nonconforming. The total area is approximately 12,760 square feet, and the minimum area for a parcel in the R-1C zoning district is 20,000 square feet. (Exhibit 1, 2, 3)
- c. The Board finds that the property has unique topography with a steep slope in the rear yard. (Exhibit 3, 4)
- d. The Board finds that

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

- a. The Board finds that the property is zoned Suburban Residential Single and Two-Family (R-1C). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the lot. (Exhibit 1, 2)
- d. The Board finds that

This standard HAS / HAS NOT been met.

- 3. That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)

The following findings may support this standard HAS been met.

- a. The Board finds that the parcel is has a unique shape and was created before the effective date of the Zoning Ordinance (Exhibit 4).

- b. The Board finds that the parcel is nonconforming. The total area is approximately 12,760 square feet, and the minimum area for a parcel in the R-1C zoning district is 20,000 square feet. (Exhibit 1, 2, 3)
- c. The Board finds that the property has unique topography with a steep slope in the rear yard. (Exhibit 3, 4)
- d. The Board finds that

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

- a. The Board finds that the property is zoned Suburban Residential Single and Two-Family (R-1C). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the lot. (Exhibit 1, 2)
- d. The Board finds that

This standard HAS / HAS NOT been met.

- 4. That the variance will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

The following findings may support this standard HAS been met.

- a. The Board finds that the parcel is has a unique shape and was created before the effective date of the Zoning Ordinance (Exhibit 4).
- b. The Board finds that the parcel is nonconforming. The total area is approximately 12,760 square feet, and the minimum area for a parcel in the R-1C zoning district is 20,000 square feet. (Exhibit 1, 2, 3)
- c. The Board finds that the property has unique topography with a steep slope in the rear yard. (Exhibit 3, 4)
- d. The Board finds that

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

- a. The Board finds that the property is zoned Suburban Residential Single and Two-Family (R-1C). According to Section 6.2.2(2)(a) an accessory structure is a use

by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)

- b. The Board finds that the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that there is a building envelope located on the lot. (Exhibit 1, 2)
- d. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that generally proposed garage is unlikely to cause adverse impacts of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b. The Board finds that

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

- a. The Board finds that

This standard HAS / 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.

The following findings may support this standard HAS been met.

- a. The Board finds that the property is zoned Suburban Residential Single and Two-Family (R-1C). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district. (Exhibits 1, 2)
- b. The Board finds that

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

- a. The Board finds that the property is zoned Suburban Residential Single and Two-Family (R-1C). According to Section 6.2.2(2)(a) an accessory structure is a use by right in the R-1C zoning district, provided however that the structure comply with the setback restrictions. (Exhibits 1, 2)
- b. The Board finds that the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)

- c. The Board finds that there is a building envelope located on the lot. (Exhibit 1, 2)
- d. The Board finds that

This standard HAS / HAS NOT been met.

VARIANCE REQUEST # 2 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of up to 9 feet from the 15 foot side yard setback requirement to allow for the construction of an attached garage.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #2 be **APPROVED / 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

Peninsula Township Planning & Zoning Department
EXHIBIT LIST

ZBA Request #853 – 7002 Peninsula Drive
August 11, 2016

EXHIBIT LIST

1. Peninsula Township Master Plan
2. Peninsula Township Zoning Ordinance
3. Request for Variance filed by Daniel Casey, property owner
4. Staff report from Peninsula Township Planning & Zoning Department

7/10/16

To: Peninsula Township Zoning Board of Appeals
From: Dan and Peggy Casey
7002 Peninsula Drive

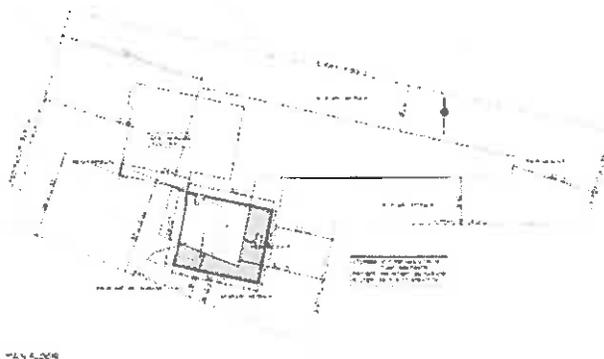
After retiring in June, we moved to Traverse City to be closer to our son's growing family. Our purpose in requesting this variance is to replace an existing shed with a garage. Due to the unusual shape of our lot, without a variance, the garage would be out of compliance with set back requirements. We believe that a garage would make our winters much easier to handle, while at the same time improving the appearance of our home.

Thank you for considering our application.

Dan and Peggy Casey



Proposed



Variance Application

Peninsula Township Variance Application Application Guidelines

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117 www.peninsulatownship.com

1. Zoning Board of Appeals (ZBA) applications are available from the Peninsula Township Planning & Zoning Department, 7:30 a.m. to 6:30 p.m., Monday, and 7:30 a.m. to 5:00 p.m. Tuesday through Thursday, or online at www.peninsulatownship.com/zoning.
2. **Applications must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the ZBA meeting. Ten (10) copies must be submitted.**
3. If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.
4. It is the applicant's responsibility to review and address the appropriate sections of the Zoning Ordinance prior to submission.
5. It is the applicant's responsibility to ensure that the application is complete upon submission. **Planning and Zoning Department staff will determine and confirm with the applicant that the application is complete.** An incomplete application will not be considered for review by the ZBA.
6. The application will be forwarded to members of the ZBA for a public hearing.
7. A notice of the public hearing must be mailed to the property owners and occupants within three hundred (300) feet of the subject property not less than fifteen (15) days before the public hearing.
8. The applicant will receive a notice of the public hearing in the mail, and is expected to attend the meeting.
9. ZBA meetings are held on the second Thursday of every month, beginning at 7:00 p.m. in the Township Hall, 13235 Center Road, Traverse City, MI 49686.
10. If the variance(s) are granted, **construction authorized by such variance(s) must begin within six (6) months after the granting of the variance, and the occupancy of land, premises, or buildings authorized by the variance must take place within one (1) year after the granting of the variance.**
11. If the variance(s) are granted, construction authorized by such variance(s) must comply with all other necessary permits. **A variance is independent from, and does not substitute for, all other permits.**

Variance Application

12. No application for a variance which has been denied wholly or in part by the Board shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.

OFFICE USE ONLY		
Date Received:	Fee Received:	Board Action:
Date Complete:	Meeting Date:	

Peninsula Township

General Information

A fully completed application form, fee, and all related documents must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the Zoning Board of Appeals meeting. **10 copies are required.**

Applicant Information

Applicant: Name Dan and Peggy Casey
 Address Line 1 7002 Peninsula Drive
 Address Line 2 Traverse City, MI 49686
 Phone 517-282-8755 Cell 517-282-8755
 E-mail danpegcasey@gmail.com

Owner: Name Dan and Peggy Casey
 Address Line 1 7002 Peninsula Drive
 Address Line 2 Traverse City, MI 49686
 Phone 517-282-8755 Cell 517-282-8755
 E-mail danpegcasey@gmail.com

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Parcel ID 28-11-325-085-00 Zoning R-1C
 Address Line 1 7002 Peninsula Drive
 Address Line 2 Traverse City, MI 49686

Type of Request

Indicate which Ordinance requirement(s) are the subject of the variance request:

- Front Yard Setback Side Yard Setback Rear Yard Setback
 Width to Depth Ratio Lot Coverage Off-Street Parking
 Signage Height/Width Non-Conformity Expansion Other: Please Describe:
We would like to replace the existing shed with a garage. Due to the unusual shape of our lot, the garage would require a variance from the set back requirements.

Variance Application

Attachments

- \$375 Fee
- Practical Difficulty Worksheet (Found on Page 3 of Application)
- Basic and Special Conditions Worksheets (Found on Pages 4-5 of Application)
- Site plan drawn to scale showing the following:
 - a. Property boundaries; Shoreline properties must show the Ordinary High Water Mark on a certified survey, and the Flood Elevation Line (3 feet above OHWM) if any;
 - b. All existing and proposed structures including decks and roof overhangs;
 - c. Setbacks for existing and proposed structures (varies by zoning district).
- Front elevation diagram drawn to scale.

Peninsula Township

Practical Difficulty Worksheet

In order for a variance to be justified, the applicant must demonstrate that strict application of the provisions of the Peninsula Township Zoning Ordinance to petitioned property would result in **Practical Difficulty** (defined in Article III of the Ordinance) inconsistent with the general purpose and intent of the Ordinance.

The Applicant must answer the following questions pertaining to practical difficult in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 3.2, Practical Difficulty: To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating **all** of the following:

- 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.**

Is this condition met? Please explain: Yes. Due to the unusual shape of our lot, we cannot replace the existing shed with a garage without a variance from set back requirements. We moved here to be closer to our son's family. We plan on living here year round and a garage would make winters much more manageable.

- 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.**

Is this condition met? Please explain: Our intention is to improve the property by replacing the existing shed with an attached garage that is consistent with the style of our house.

Variance Application

3. The plight of the owner is due to unique circumstances of the property.

Is this condition met? Please explain: Yes. Our lot has a very unusual shape. This makes a variance necessary in order to fit the garage on the site.

4. The problem was not self-created.

Is this condition met? Please explain: Yes. We purchased the house in June of 2016. We had nothing to do with the creation of the shape of the lot.

Peninsula Township Basic Conditions Worksheet

In order for a variance to be justified, the Applicant must meet **all of the Basic Conditions**, as defined in Section 5.7.3(1) of the Peninsula Township Zoning Ordinance. The Applicant must answer the following questions pertaining to the Basic Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(1) Basic Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided all of the Basic Conditions listed herein can be satisfied.**

(1) **BASIC CONDITIONS:** The applicant must meet ALL of the following Basic Conditions. That any variance from this Ordinance:

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

Is this condition met? Please explain: Yes. Replacing the shed with a garage will improve the appearance of the house without negatively impacting our neighbors or the community.

Variance Application

- b. **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.**

Is this condition met? Please explain: __Yes. My wife and I have been married for 38 years and moved here to be closer to our son and his family. The house is to be used only as our private residence.

- c. **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.**

Is this condition met? Please explain: Yes. Replacing the shed with a garage will improve the appearance of the site and increase property values in the community.

-
- d. **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.**

Is this condition met? Please explain: __Yes. This problem exists because of a very unusually shaped lot.

-
- e. **Will relate only to property that is under control of the applicant.**

Is this condition met? Please explain: __Yes. The garage will be completely on our property.

Peninsula Township Special Conditions Worksheet

In order for a variance to be justified, the applicant must meet **at least one of the Special Conditions**, as defined in Section 5.7.3(2) of the Peninsula Township Zoning Ordinance. The applicant must answer the following questions pertaining to the Special Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(2) Special Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided at least one of the Special Conditions listed herein can be satisfied.**

Variance Application

(2) **SPECIAL CONDITIONS:** When ALL of the foregoing Basic Conditions can be clearly demonstrated, the applicant must meet at least ONE of the following Special Conditions:

- a. **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.**

Is this condition met? Please explain: Yes. Our intention is to live here year round. Being able to put our cars in a garage will make the winters much easier to **manage**. _____

- b. **Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted for any act of the applicant subsequent to the adoption of this Ordinance.**

Is this condition met? Please explain: Yes. We moved to our house in June of 2016. We had nothing to do with the unusual shape of the lot.

- c. **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.**

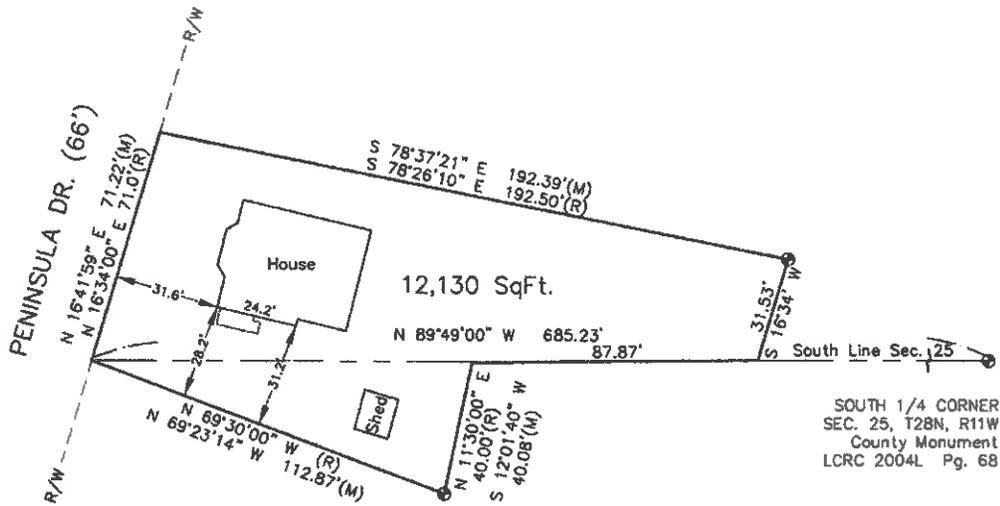
Is this condition met? Please explain: No. This does not apply to us.

- d. **Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.**

Is this condition met? Please explain: No. This does not apply to us

Variance Application

Certificate of Survey



SOUTH 1/4 CORNER
SEC. 25, T28N, R11W
County Monument
LCRC 2004L Pg. 68

Legend

- IRON FND
- IRON SET
- ▲ P.K. FND.
- △ P.K. SET
- ⊙ MONUMENT FND.
- (R) RECORD
- (M) MEASURED



DESCRIPTION AS FURNISHED

Part of Government Lot 4, Section 25 and Government Lot 1, Section 36, described as Commencing on the South line of Section 25 at a point North 89°49' West 685.23 feet from the South 1/4 post, which point is 81.2 feet East of Meander Post; thence North 16°34' East along easterly line of West Bay Shore Road, 71 feet; thence South 78°26' East 192.50 feet; thence South 16°34' West 31.53 feet to South line of Section 25; thence North 89°49' West 87.87 feet to a point 114 feet East of Point of Beginning; thence South 11°30' West 40 feet; thence North 69°30' West to Point of Beginning, Sections 25 and 26, T28N, R11W.

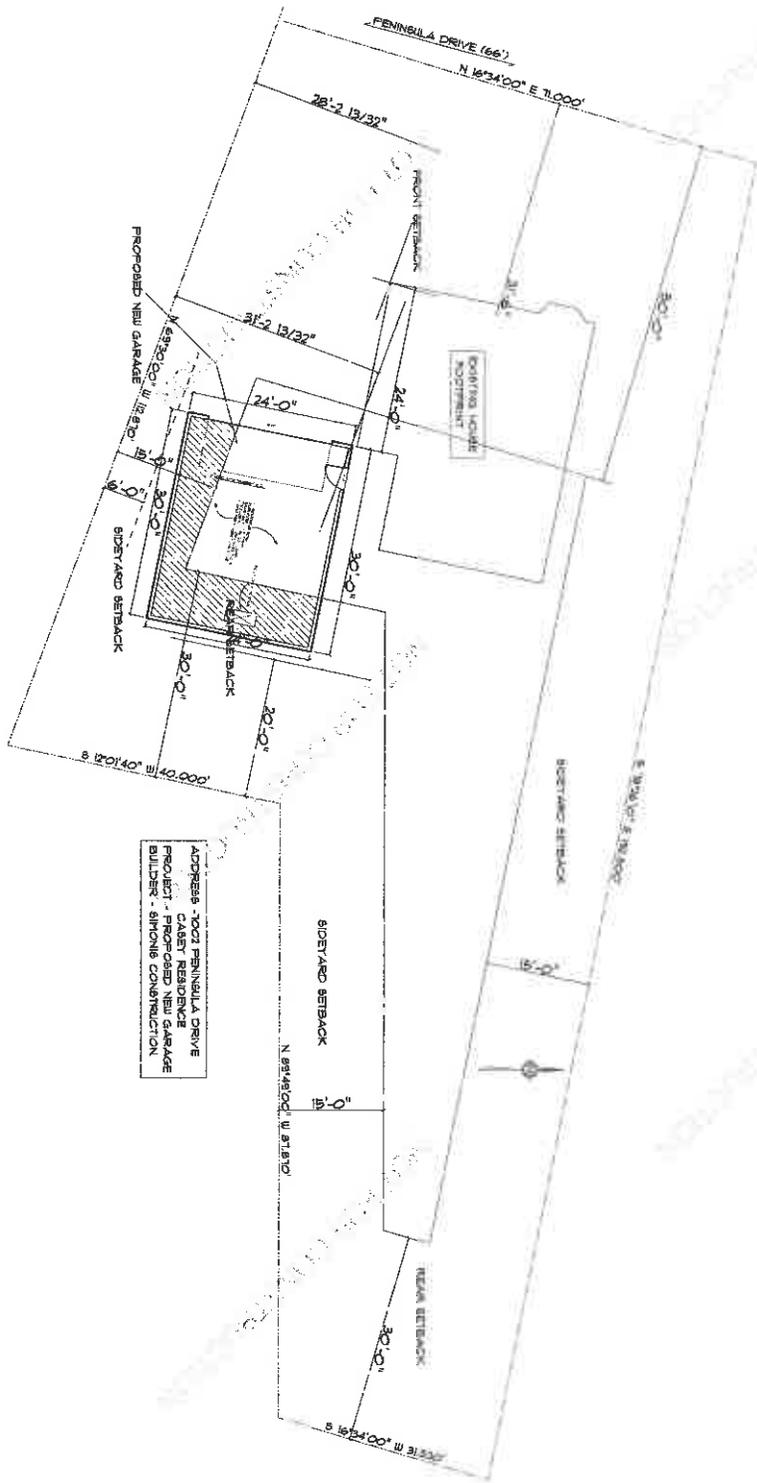
I, Scott D. McLain, a Professional Surveyor in the State of Michigan, do hereby certify that I have surveyed and mapped the hereon described parcel(s) of land; that the ratio of closure of the unadjusted field observations is within the accepted limits; and that I have fully complied with the requirements of P.A 132 of 1970, as amended.

Scott D. McLain
Professional Surveyor 57817

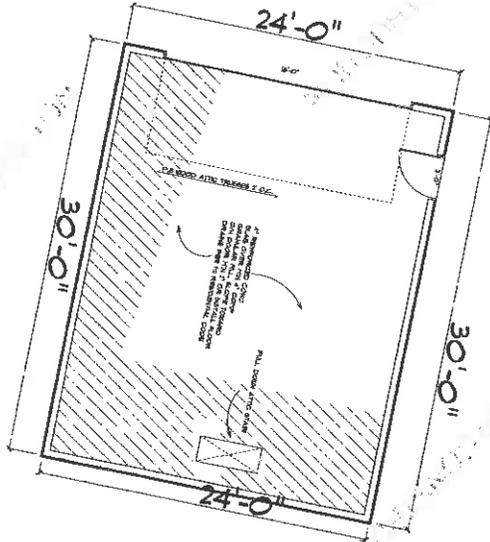
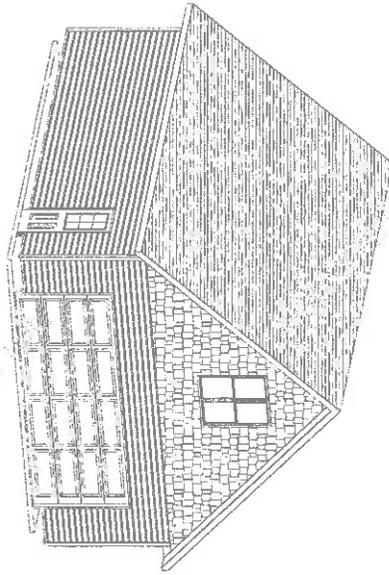
Ratio of Closure: 1/10,000
Basis of Bearing: Description as Furnished

<p>Michigan Geomatics Professional Land Surveying Civil Engineering 5422 Goodrick Road Traverse City, MI 49684 (231) 325-2655 MichiganGeomatics.com</p>	For:	
	DAN CASEY	
	Part of Gov't Lot 4, Sec. 25 & Lot 1, Sec. 36, T28N, R11W, Peninsula Township, Grand Traverse Co., Michigan.	
	Date: June 3, 2016	File No: 16-3063
Drafted By: SDM		Sheet: 1 of 1

MAIN FLOOR
SCALE: 1/8" = 1'-0"



ADDRESS: 7002 FENINSULA DRIVE
PROJECT: CASBY RESIDENCE
BUILDER: SIMONS CONSTRUCTION



ADDRESS - 1001 PENINSULA DRIVE
 CASEY RESIDENCE
 PROJECT - PROPOSED NEW GARAGE
 BUILDER - SIMONIS CONSTRUCTION

LEGAL NOTICE

PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS
NOTICE OF HEARING

PLEASE TAKE NOTICE that the Peninsula Township Zoning Board of Appeals will hold a regular meeting on August 11, 2016 at 7:00 PM at the Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686, (231) 223-7322. The following applicants will be heard:

1. Request No. 854, Zoning R-1B

Applicant: Joseph & Felicia Manhart, 2959 Mona Lisa Blvd, Naples, FL 34119

Owner: Joseph & Felicia Manhart, 2959 Mona Lisa Blvd, Naples, FL 34119

Property Address: 13415 Bluff Rd., Traverse City, MI 49686

Requests: (1) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (2) a variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (3) a variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (4) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (5) a variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

Parcel Code No. 28-11-420-021-00

Please be advised that the public may appear at the public hearing in person or by council.

Written comment may be submitted to Peninsula Township Planning & Zoning Department at 13235 Center Rd., Traverse City, MI 49686 no later than 4:30 PM on the date of the hearing.

If you are planning to attend the meeting and are disabled requiring any special assistance, please so notify the Planning & Zoning Department at (231) 223-7322 or call TDD at (231) 922-4766.

SUBJECT PROPERTY



Peninsula Township Planning & Zoning Department
STAFF REPORT

ZBA Request #854 – 13415 Bluff Road
August 11, 2016

To: Peninsula Township Zoning Board of Appeals
From: Claire Schoolmaster, Planning & Zoning
RE: Request No. 854 – 13415 Bluff Road
Hearing Date: August 11, 2016 – 7:00 PM
Applicant: Joseph & Felicia Manhart, 2959 Mona Lisa Blvd, Naples, FL 34119
Site: 13415 Bluff Road, Traverse City, MI 49686
Tax IDs: 28-11-420-021-00

Information:

- Parcel 28-11-420-021-00 is approximately 0.627 total acres in size.
- The parcel is zoned Coastal Zone Single and Two-Family (R-1B); the surrounding area is also zoned Coastal Zone Single and Two-Family (R-1B).
- The parcel was created in 1990, after the adoption of the Peninsula Township Zoning Ordinance in 1972, and is conforming.
- The parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot.
- The retaining walls were previously constructed on the eastern zoning lot without applying for a land use permit.

Action

Requested: (1) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (2) a variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (3) a variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (4) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (5) a variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

Mailing: Sixteen (16) surrounding property owners were notified. Four (4) comments were received as of August 4, 2016.

Applicant

Statement: Please see the enclosed application submitted by Joseph & Felicia Manhart, property owners.

Staff Comments:

Requests #1 - 5

The applicant is requesting variances regarding the presence of 2 existing retaining walls to prevent erosion into the Great Lakes.

Background

The retaining walls were originally constructed to prevent erosion into the water without applying for an LUP. Upon discovering the need for a permit the applicant notified staff as soon as possible. After reviewing the site plan staff determined the need for variances.

Retaining Wall #1 conforms to relevant zoning standards for the minimum south side yard setback, but does not conform to the minimum north side yard, front yard, or OHWM setback restrictions as demonstrated in the following table:

R-1B Standards (Section 6.8)	Required	Wall #1	Conforms to Standard?	Variance	Request #
Minimum Front Setback	30'	22'	No	8'	2
Minimum OHWM Setback	60'	35'	No	25'	3
Minimum North Side Setback	15'	0'	No	15'	1
Minimum South Side Setback	15'	42'	Yes	n/a	n/a

Retaining Wall #2 conforms to relevant zoning standards for the minimum south side yard and front yard setbacks, but does not conform to the minimum north side yard or OHWM setback restrictions as demonstrated in the following table:

R-1B Standards (Section 6.8)	Required	Wall #2	Conforms to Standard?	Variance	Request #
Minimum Front Setback	30'	36'	Yes	n/a	n/a
Minimum OHWM Setback	60'	20'	No	40'	5
Minimum North Side Setback	15'	0'	No	15'	4
Minimum South Side Setback	15'	43'	Yes	n/a	n/a

The applicant requests (1) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (2) a variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (3) a variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (4) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (5) a variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion. The requested variance must meet the following standards in order to be granted. Specific staff comments follow the standards.

A. Section 3.2 Definition of Practical Difficulty

To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating all of the following:

- a) 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.
- b) 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.
- c) The plight of the owner is due to unique circumstances of the property and the problem was not self-created.

B. Section 5.7.3 Variances

The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED ALL of the BASIC conditions listed herein and any ONE of the SPECIAL conditions listed thereafter can be satisfied.

- 1) Basic Conditions: That any variance from this Ordinance:
 - a. Will not be contrary to the public interest or to the intent and purpose of this Ordinance.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. Will relate only to the property that is under control of the applicant.
- 2) Special Conditions: When ALL of the foregoing basic conditions can be clearly demonstrated:
 - a. 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.
 - b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance.
 - c. 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.
 - d. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

The subject property, zoned R-1B, was created after the effective date of the Ordinance and considered conforming. The western zoning lot width is approximately 100 feet and the length is approximately 250 feet. The eastern zoning lot width is approximately 77 feet and the length is approximately 42 feet.

Peninsula Township Planning & Zoning Department
FINDINGS OF FACT

ZBA Request #854 – 13415 Bluff Road
August 11, 2016

DECISION AND ORDER

Applicant: Joseph & Felicia Manhart, 2959 Mona Lisa Blvd, Naples, FL 34119

Hearing

Date: August 11, 2016

PROPERTY DESCRIPTION

The property of 13415 Bluff Road, Traverse City, MI 49686, Parcel No. 28-11-420-021-00 herein after referred to as the “property”.

APPLICATION

Requests: (1) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (2) a variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (3) a variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (4) a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion; and (5) a variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

The Board having considered the Application, a public hearing having been held on August 11, 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 four (4) 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 created in 1990 and is conforming. (Exhibit 1, 2)
3. The Board finds that the existing retaining walls do not conform to relevant zoning standards. (Exhibits 2, 3, 4)
4. The parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
5. The Board finds that the applicant requests a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion. (Exhibit 3)

6. The Board finds that the applicant requests a variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion. (Exhibit 3)
7. The Board finds that the applicant requests a variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion. (Exhibit 3)
8. The Board finds that the applicant requests a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion. (Exhibit 3)
9. The Board finds that the applicant requests a variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion. (Exhibit 3)

Variance Request #1 A variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

FINDINGS UNDER SECTION 5.7.3 VARIANCES OF THE ZONING ORDINANCE

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

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

1. 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.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)

- c. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 3. That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)

The following findings may support this standard HAS 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(2)(a) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)

- c. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- d. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- e. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 4. That the variance will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)

- c. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that generally existing retaining wall is unlikely to cause adverse impacts of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b. The Board finds that

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

- a. The Board finds that

This standard HAS / 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.

The following findings may support this standard HAS 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(2)(a) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

VARIANCE REQUEST # 1 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

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

Variance Request #2 A variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

FINDINGS UNDER SECTION 5.7.3 VARIANCES OF THE ZONING ORDINANCE

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

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

1. 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.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the front yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the front yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 3. That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)

The following findings may support this standard HAS 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(2)(a) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)

- b. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- c. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- d. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- e. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the front yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 4. That the variance will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the front yard setback restriction. (Exhibits 2, 3, 4)

c. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

a. The Board finds that generally existing retaining wall is unlikely to cause adverse impacts of the subject property or that of any neighboring properties. (Exhibits 3, 4)

b. The Board finds that

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

a. The Board finds that

This standard HAS / 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.

The following findings may support this standard HAS 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(2)(a) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)

b. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the front yard setback restriction. (Exhibits 2, 3, 4)

c. The Board finds that

This standard HAS / HAS NOT been met.

VARIANCE REQUEST # 2 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of up to 8 feet from the 30 foot front yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #2 be **APPROVED / DENIED**.

Variance Request #3 A variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

FINDINGS UNDER SECTION 5.7.3 VARIANCES OF THE ZONING ORDINANCE

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

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

1. 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.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the OHWM setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the OHWM setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 3. That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)

The following findings may support this standard HAS 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(2)(a) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- c. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- d. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- e. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the OHWM setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 4. That the variance will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the OHWM setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that generally existing retaining wall is unlikely to cause adverse impacts of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b. The Board finds that

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

- a. The Board finds that

This standard HAS / 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.

The following findings may support this standard HAS 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(2)(a) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the OHWM setback restriction. (Exhibits 2, 3, 4)

c. The Board finds that

This standard HAS / HAS NOT been met.

VARIANCE REQUEST # 3 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of up to 25 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #3 be **APPROVED / DENIED**.

Variance Request #4 A variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

FINDINGS UNDER SECTION 5.7.3 VARIANCES OF THE ZONING ORDINANCE

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

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

1. 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.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

- 3. That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in

complying with this ordinance does not automatically make compliance unnecessarily burdensome.)

The following findings may support this standard HAS 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(2)(a) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- c. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- d. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- e. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

4. That the variance will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)

d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that generally existing retaining wall is unlikely to cause adverse impacts of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b. The Board finds that

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

- a. The Board finds that

This standard HAS / 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.

The following findings may support this standard HAS 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(2)(a) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the side yard setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

VARIANCE REQUEST #4 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of up to 15 feet from the 15 foot side yard setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #4 be **APPROVED / DENIED**.

Variance Request #5 A variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

FINDINGS UNDER SECTION 5.7.3 VARIANCES OF THE ZONING ORDINANCE

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

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

- 1. 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.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)

- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the OHWM setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the OHWM setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

3. That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)

The following findings may support this standard HAS 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(2)(a) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- c. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)
- d. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- e. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the OHWM setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

4. That the variance will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

The following findings may support this standard HAS been met.

- a. The Board finds that the property has unique topography that slopes from west to east. (Exhibit 2, 3)
- b. The Board finds that the parcel is divided by Bluff Road and there is no building envelope located on the eastern zoning lot. (Exhibits 1, 2)

- c. The Board finds that the eastern zoning lot requires retaining walls to prevent long term erosion and to protect the Great Lakes. (Exhibit 3)
- d. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the OHWM setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

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

The following findings may support this standard HAS been met.

- a. The Board finds that generally existing retaining wall is unlikely to cause adverse impacts of the subject property or that of any neighboring properties. (Exhibits 3, 4)
- b. The Board finds that

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

- b. The Board finds that

This standard HAS / 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.

The following findings may support this standard HAS 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(2)(a) an accessory structure is a use by right in the R-1B zoning district. (Exhibits 1, 2)
- b. The Board finds that

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(2)(a) an accessory structure 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 the existing retaining wall does not comply with the OHWM setback restriction. (Exhibits 2, 3, 4)
- c. The Board finds that

This standard HAS / HAS NOT been met.

VARIANCE REQUEST # 5 MOTION TO APPROVE / DENY

The Peninsula Township Board of Appeals has **APPROVED / DENIED** your request for a variance of up to 40 feet from the 60 foot Ordinary High Water Mark setback requirement to allow for the presence of an existing retaining wall to prevent waterfront erosion.

CONDITIONS OF APPROVAL

- 1.
- 2.
- 3.

DECISION

Upon motion, seconded and passed the Board ruled that the Applicant's variance request #5 be **APPROVED / 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

Peninsula Township Planning & Zoning Department
EXHIBIT LIST

ZBA Request #854 – 13415 Bluff Road
August 11, 2016

EXHIBIT LIST

1. Peninsula Township Master Plan
2. Peninsula Township Zoning Ordinance
3. Request for Variance filed by Joseph Manhart, property owner
4. Staff report from Peninsula Township Planning & Zoning Department

1	Peninsula Township Variance Application Page 2 - General Information Page 3 - Practical Difficulty Worksheet Page 4,5 - Special Conditions Worksheets
2	Front elevation diagram 32% Percent Grade West to East Property line to property line Certified Survey - Gourdie Fraser
3	Soil and Erosion Permit
4	Letter(s) of support
5	Photographs of site 5 pages

TAB 1

Peninsula Township Variance Application

Application Guidelines

13235 Center Road, Traverse City MI 49686

Ph: 231.223.7322 Fax: 231.223.7117

www.peninsulatownship.com

1. Zoning Board of Appeals (ZBA) applications are available from the Peninsula Township Planning & Zoning Department, 7:30 a.m. to 6:30 p.m., Monday, and 7:30 a.m. to 5:00 p.m. Tuesday through Thursday, or online at www.peninsulatownship.com/zoning.
2. **Applications must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the ZBA meeting. Ten (10) copies must be submitted.**
3. If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.
4. It is the applicant's responsibility to review and address the appropriate sections of the Zoning Ordinance prior to submission.
5. It is the applicant's responsibility to ensure that the application is complete upon submission. **Planning and Zoning Department staff will determine and confirm with the applicant that the application is complete.** An incomplete application will not be considered for review by the ZBA.
6. The application will be forwarded to members of the ZBA for a public hearing.
7. A notice of the public hearing must be mailed to the property owners and occupants within three hundred (300) feet of the subject property not less than fifteen (15) days before the public hearing.
8. The applicant will receive a notice of the public hearing in the mail, and is expected to attend the meeting.
9. ZBA meetings are held on the second Thursday of every month, beginning at 7:00 p.m. in the Township Hall, 13235 Center Road, Traverse City, MI 49686.
10. If the variance(s) are granted, **construction authorized by such variance(s) must begin within six (6) months after the granting of the variance, and the occupancy of land, premises, or buildings authorized by the variance must take place within one (1) year after the granting of the variance.**
11. If the variance(s) are granted, construction authorized by such variance(s) must comply with all other necessary permits. **A variance is independent from, and does not substitute for, all other permits.**
12. No application for a variance which has been denied wholly or in part by the Board shall be resubmitted for a period of one (1) year from the date of the last denial, except on the grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.

OFFICE USE ONLY		
Date Received:	Fee Received:	Board Action:
Date Complete:	Meeting Date:	

Peninsula Township Variance Application

General Information

A fully completed application form, fee, and all related documents must be submitted to the Planning & Zoning Department at least four (4) weeks prior to the Zoning Board of Appeals meeting. **10 copies are required.**

Applicant Information

Applicant: Name Joseph E Manhart
Address Line 1 13415 Bluff Rd
Address Line 2 _____
Phone _____ Cell 239 273-9529
E-mail joemanhart@gmail.com

Owner: Name Same
Address Line 1 _____
Address Line 2 _____
Phone _____ Cell _____
E-mail _____

(If the applicant is not the property owner, a letter signed by the owner agreeing to the variance must be included with the application.)

Property Information

Parcel ID 28-11-420-021-00 Zoning R1-B
Address Line 1 _____
Address Line 2 _____

Type of Request

Indicate which Ordinance requirement(s) are the subject of the variance request:

- Front Yard Setback Side Yard Setback Rear Yard Setback
 Width to Depth Ratio Lot Coverage Off-Street Parking
 Signage Height/Width Non-Conformity Expansion
 Other: Please Describe: _____

Attachments

- \$375 Fee
 Practical Difficulty Worksheet (Found on Page 3 of Application)
 Basic and Special Conditions Worksheets (Found on Pages 4-5 of Application)
 Site plan drawn to scale showing the following:
 a. Property boundaries; Shoreline properties must show the Ordinary High Water Mark on a certified survey, and the Flood Elevation Line (3 feet above OHWM) if any;
 b. All existing and proposed structures including decks and roof overhangs;
 c. Setbacks for existing and proposed structures (varies by zoning district).
 Front elevation diagram drawn to scale.

Peninsula Township Variance Application

Practical Difficulty Worksheet

In order for a variance to be justified, the applicant must demonstrate that strict application of the provisions of the Peninsula Township Zoning Ordinance to petitioned property would result in **Practical Difficulty** (defined in Article III of the Ordinance) inconsistent with the general purpose and intent of the Ordinance.

The Applicant must answer the following questions pertaining to practical difficulty in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 3.2, Practical Difficulty: To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating **all** of the following:

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.

Is this condition met? Please explain: Yes Grand Traverse Soil and Erosion Department has issued me a permit for the retention walls and concluded that what I am doing will satisfy the erosion problem. Conformity to front and back and Side setbacks would eliminate the ability to construct retaining walls to eliminate erosion.

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.

Is this condition met? Please explain: Yes If the variances requested were granted it would control erosion over the property lines onto the neighbors. The variances would have no impact and will improve conditions on my neighbors' parcels.
See attached letters.

3. The plight of the owner is due to unique circumstances of the property.

Is this condition met? Please explain: Yes The property size, proximity to the high water mark and distance from the road would make meeting the setbacks and building retaining walls to stop erosion into the East Bay impossible.

The side setbacks would allow continued erosion. Without building out the retaining wall to meet a pre-existing retaining wall on the adjacent property, and to the property line, there would be erosion through that side setback.

4. The problem was not self-created.

Is this condition met? Please explain: No The Previous owners did nothing to create the erosion yet they also did nothing to correct the problem. It should be noted that:

The previous owners to them cut down an estimated eight trees. Those tree roots and trunks from those trees have decayed to the point that they are no longer holding the soil in place.

Peninsula Township Variance Application

Basic Conditions Worksheet

In order for a variance to be justified, the Applicant must meet **all of the Basic Conditions**, as defined in Section 5.7.3(1) of the Peninsula Township Zoning Ordinance. The Applicant must answer the following questions pertaining to the Basic Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(1) Basic Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided all of the Basic Conditions listed herein can be satisfied.**

(1) **BASIC CONDITIONS:** The applicant must meet ALL of the following Basic Conditions. That any variance from this Ordinance:

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

Is this condition met? Please explain: Other owners on Bluff Rd with similar lot sizes and lot lines so close to the high water mark, Bluff Rd. and side setbacks have similar problems.

b. 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.

Is this condition met? Please explain: This will not create any additional special uses

c. 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.

Is this condition met? Please explain: It will not - but would satisfy concerns of prospective buyers that when these variances are granted and retaining walls are built that they would be more inclined to purchase the properties

d. 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.

Is this condition met? Please explain: The present setbacks for this property's unique size, shape and proximity to both the water and the road makes the prevention of and controlling erosion unreasonable. Side setbacks would hold open an area for further erosion.

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

Is this condition met? Please explain: I am not requesting variances for any other property

Peninsula Township Variance Application

Special Conditions Worksheet

In order for a variance to be justified, the applicant must meet at least one of the Special Conditions, as defined in Section 5.7.3(2) of the Peninsula Township Zoning Ordinance. The applicant must answer the following questions pertaining to the Special Conditions in detail. Please attach a separate sheet if necessary and label comments on the attached sheet with corresponding number/letter on application.

Section 5.7.3(2) Special Conditions: The Board shall have the power to authorize, upon an appeal specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, **provided at least one of the Special Conditions listed herein can be satisfied.**

(2) **SPECIAL CONDITIONS:** When ALL of the foregoing Basic Conditions can be clearly demonstrated, the applicant must meet at least ONE of the following Special Conditions:

- a. **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.**

Is this condition met? Please explain: Yes - the hillside and front retaining walls will allow for the use of the property whereas before the stability and accessibility made it unusable. Trees removed years ago left stumps that were rotting and decaying causing unstable conditions.

- b. **Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall not have resulted for any act of the applicant subsequent to the adoption of this Ordinance.**

Is this condition met? Please explain: Yes Shallowness, topography and the existence of a retaining wall on the adjacent property are all factors in requesting the variances. These are all extraordinary conditions.

- c. **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.**

Is this condition met? Please explain: _____

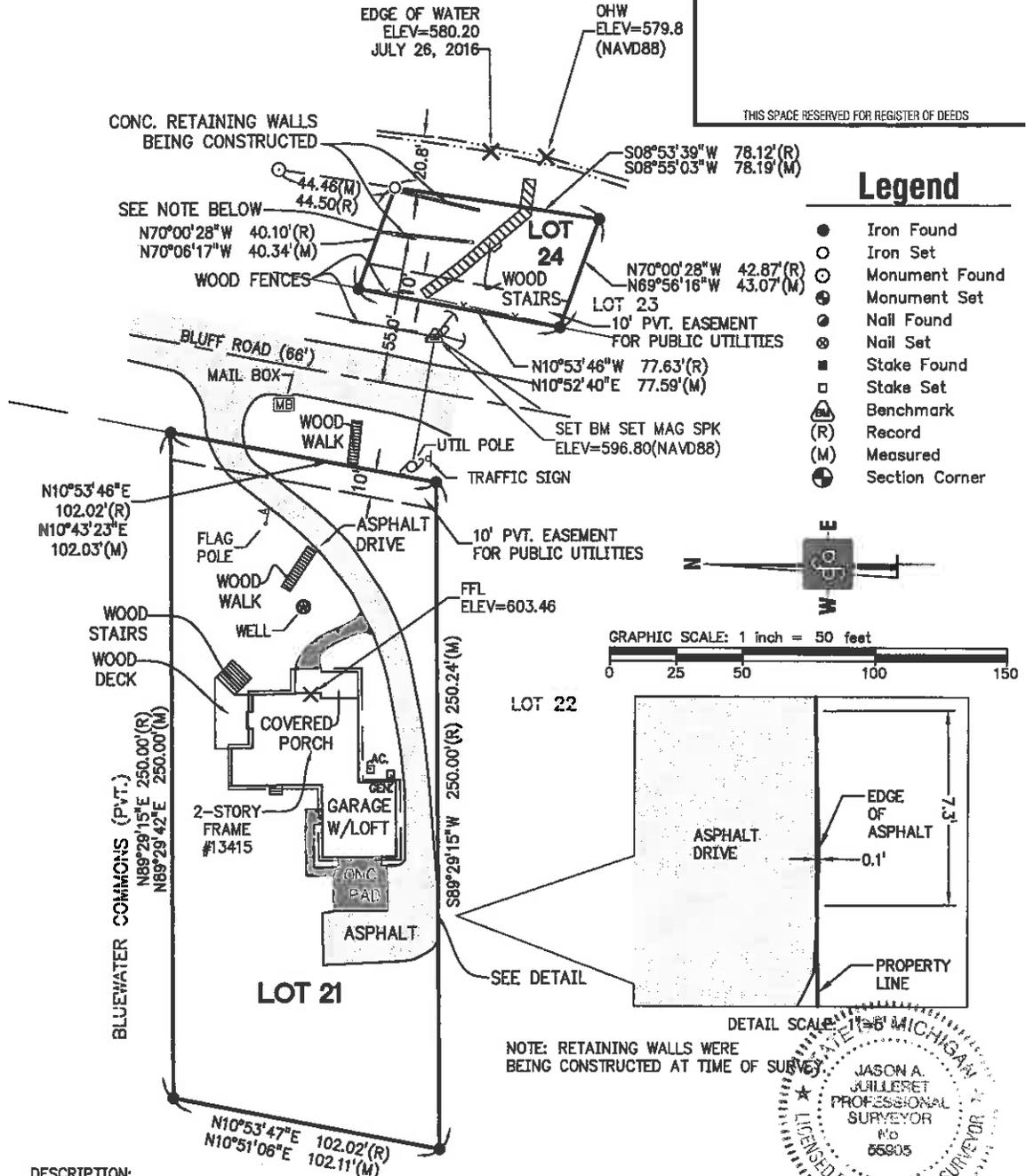
- d. **Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.**

Is this condition met? Please explain: Yes - other properties to the north and south of my property have the similar conditions and the proposed variances will enhance and preserve the rights of other properties..

TAB 2

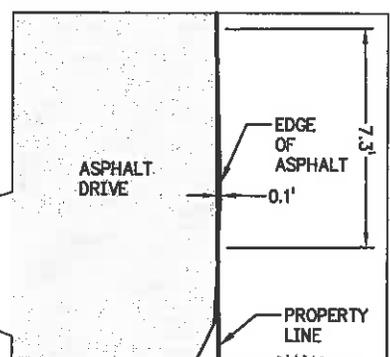
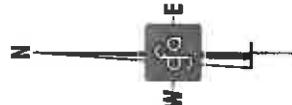
CERTIFICATE OF SURVEY

EAST ARM GRAND TRAVERSE BAY



Legend

- Iron Found
- Iron Set
- ⊙ Monument Found
- ⊕ Monument Set
- ⊙ Nail Found
- ⊕ Nail Set
- ⊙ Stake Found
- ⊕ Stake Set
- ⊕ Benchmark
- (R) Record
- (M) Measured
- ⊙ Section Corner



<p>ENGINEERING SURVEYING TESTING & OPERATIONS</p> <p>123 West Front Street Traverse City, MI 49684</p>		<p>http://gfa.tc</p> <p>231.946.5874 (p)</p> <p>231.946.3703 (f)</p>	<p>Location:</p> <p style="text-align: center;">BLUEWATER BLUFFS PART OF SECTIONS 26 & 27 TOWN 29 NORTH, RANGE 10 WEST PENINSULA TOWNSHIP, GRAND TRAVERSE COUNTY, MI</p>	<p>DATE: 7/19/2016</p> <p>PM: J. A. JULLERET</p> <p>DR: MJC CD: JAJ</p> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">16228</p> <p style="text-align: center;">SHT 1 OF 1</p>
THESE DOCUMENTS ARE PREPARED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONTRACT FOR THIS PROJECT.				

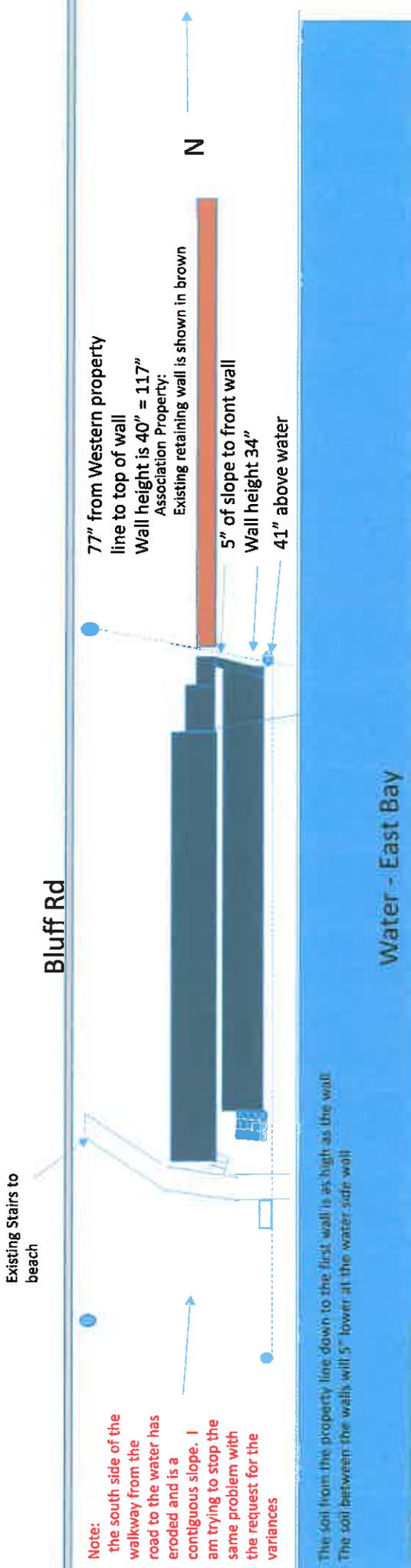
Front Elevation from water for lot 24 - 7/17/16

13415 Bluff Rd

As per the plot map: the lot is 78.63' on East side and 78.12 on West side
the south side is 42.87' and the north side is 40.1'



From the water level to the Eastern property line there is a 41 inch rise.

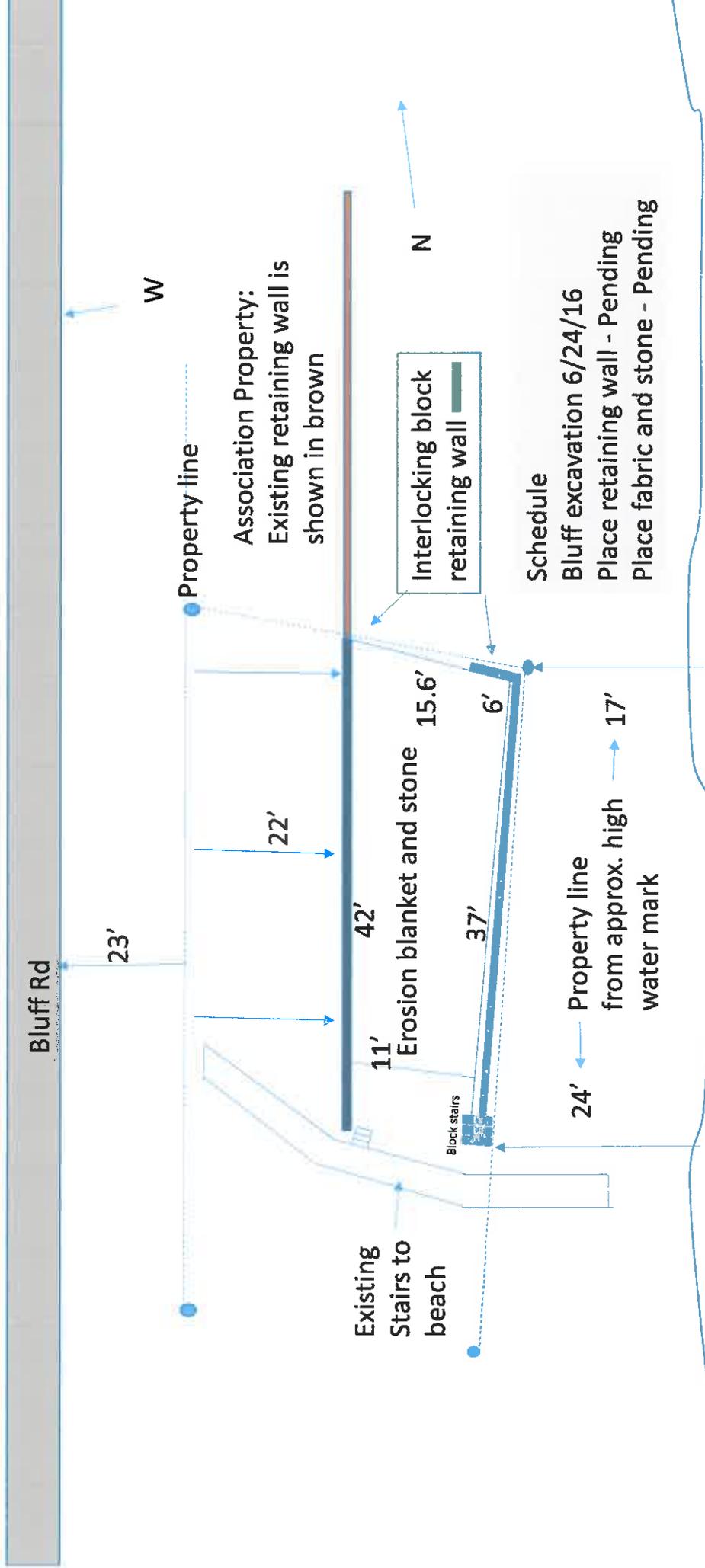


Interlocking block retaining wall
82lbs each
16"W 6"H 12"D

From Western Property line to Eastern property line
Height difference = 156" with a span from each line of an average of 492" = 32% grade

Township Sight Plan for lot 24 - 8/11/16

13415 Bluff Rd



TAB 3

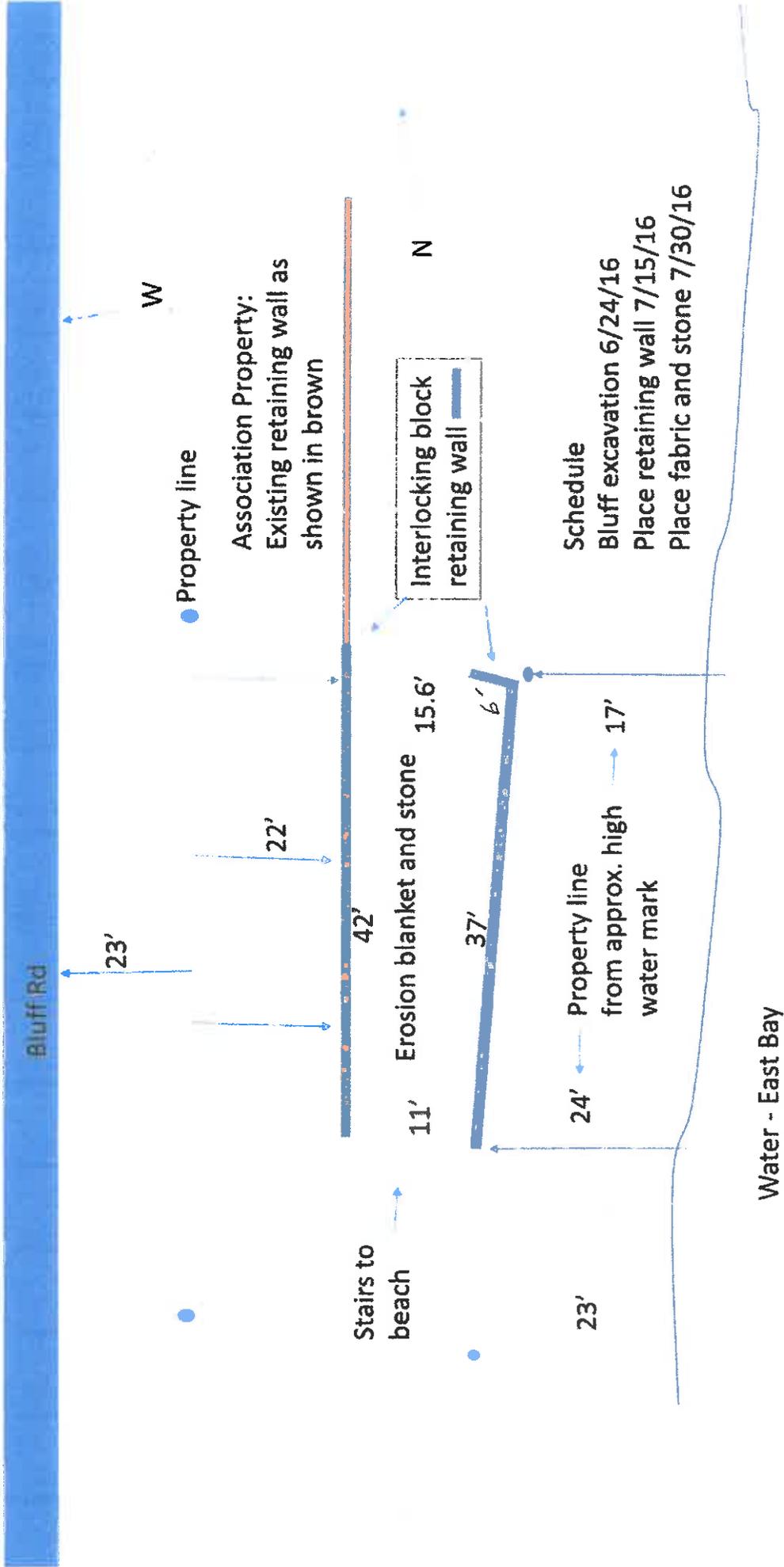
REVIEWED / APPROVED
Soil Erosion Compliance
Subject to Field Inspections

Reviewer GA Date 7/12/16

[Signature]

13415 Bluff Rd

Revised 7/12/16



TAB 4



GRAND TRAVERSE COUNTY
SOIL EROSION – SEDIMENTATION CONTROL DEPT
400 Boardman Ave
Traverse City, Michigan 49684
(231) 995-6042
gzagore@grandtraverse.org

TO: PENINSULA TOWNSHIP ZONING JOSEPH MANHART
CLAIRE SCHOOLMASTER 13415 BLUFF RD
13235 CENTER RD TRAVERSE CITY, MI 49686
TRAVERSE CITY, MI 49686

RE: RETAINING WALL AT 13415 BLUFF RD, TRAVERSE CITY, MI

To Whom It May Concern:

The Soil Erosion and Sedimentation Control Department issued a permit for 13415 Bluff Rd to allow the owner to construct a retaining wall on the east side of Bluff Road to prevent erosion of the area and create a patio on which to sit.

Due to the eroding bank that previously existed, a retaining wall is a viable solution to prevent further erosion. The bank contains a large amount of organic matter from decaying tree roots, not only creating an unstable bank, but potentially allowing that organic matter to migrate into the waters of Grand Traverse Bay. The plan that was initially submitted to this office has only one (1) retaining wall. However, the owner realized that the soil cannot be stabilized properly with only one wall. The eastern most soil area was at too steep of a grade to retain its integrity, therefore the second wall was approved.

The western most wall is placed on the most vulnerable part of the slope, although it is within the road set back. Placing it at the 66 foot road set back will decrease its usefulness and create a gap between it and the wall to the north. As it is currently designed, it connects with the wall on the property to the north, placing the wall within the 15 foot setback and crossing 2 feet onto the property. It is better to connect Mr. Manhart's wall to the existing wall on the neighboring property to the north, than to end the new wall at the set back. If a gap is left between the two walls, water will begin to wash between the two structures, creating more erosion and possibly undermining both walls. Such erosion has the potential to produce sedimentation on the beach and in the water. In addition the easterly wall will need to be built to the property line to create a stable area.

From a Soil Erosion and Sedimentation stand point, the current design creates a stable area, protecting the banks from further degradation and erosion.

If you have any questions or need additional information, please feel free to call me at 231-995- 6055 or gzagore@grandtraverse.org.

Thank you,


Owen Zagore

Soil Erosion Inspector

Grand Traverse County Soil Erosion – Sedimentation Control Dept

Cc: Jean Derenzy, Director Soil Erosion and Sedimentation Control Dept



RAZAVI
LAW OFFICES

RAZAVI LAW OFFICES, PLLC

1004 E. Eighth Street, Traverse City, MI 49686
www.razavi-law.com

July 26, 2016

To Whom It May Concern:

The Bluewater Bluffs Homeowner Association owns waterfront property adjacent to and north of Mr. Manhart's waterfront property.

We are aware of Mr. Manhart's proposed variances and planned improvements and modifications to his property. Our membership has voted on whether to support or oppose Mr. Manhart's requested variances.

The result of that vote is that we have no objection to Peninsula Township granting Mr. Manhart the variances that he is requesting.

Sincerely,

Michelle Steffen
President, Blue Water Bluffs

Joe Manhart

From: Maison, Craig <cmaison@masonicpathways.com>
Sent: Tuesday, July 26, 2016 11:30 AM
To: joemanhart@gmail.com
Cc: michelle@razavi-law.com
Subject: Lakeshore Improvements

Dear Joe,

The improvements you have made with coating the stone wall on the lakeshore have been beautiful. It will keep the erosion down to a minimum. As a property owner on 1/22 of the beach property I'm grateful for these improvements. My hope is that we as property owners of Blue Shore continue to make improvements to the lake shore frontage.

Sincerely,

Craig Maison
(231)883-9436

Peninsula Township Board
July 13, 2016

To All Concerned

My name is Kent Rabish, my wife and I live at 13383 Bluff Road. Joe & Felicia Manhart are our neighbor's and live in the home adjacent to the north. We both have waterfront on East Bay and with water levels rising again will be dealing with erosion problems on the bank going down to the water. We support what Joe and Felicia have done to their waterfront to control erosion and most likely in the near future we will also be working on this issue out front of our home. The work they have done is beautiful and functional.

We support the positive changes to their waterfront.

Sincerely

A handwritten signature in black ink, appearing to read "Kent Rabish". The signature is written in a cursive style with a large initial "K".

Kent & Peg Rabish
13383 Bluff Road
Traverse City, MI 49686

TAB 5











**PENINSULA TOWNSHIP ZONING BOARD OF APPEALS
RESOLUTION FOR ZBA INTERPRETATION**

Resolution No. _____ of 2016

At a regular meeting of the Peninsula Township Zoning Board of Appeals, Grand Traverse County, Michigan held in the Peninsula Township Hall, located in Peninsula Township, Michigan on _____, 2016.

PRESENT: _____

ABSENT: _____

The following resolution was made by _____ and seconded by _____,

_____ , to-wit:

Recitals

WHEREAS, the Zoning Administrator has requested that this Board review and interpret the language contained in Section 8.7.3(10)(u)1.(d) regarding what activities a winery-chateau can engage in with respect to groups, guests and members of the public without a Guest Activity Permit; and

WHEREAS, the Zoning Board of Appeals has fully discussed this matter at a meeting held on June 23, 2016 and the Zoning Board of Appeals having reviewed the language of the Peninsula Township Zoning Ordinance and having held a public hearing on the matter.

Resolution

NOW, THEREFORE, BE IT RESOLVED that:

1. Section 8.7.3(10)(u)1.(d) of the Peninsula Township Zoning Ordinance states that a winery-chateau may, without a Guest Activity Permit, do the following:
 - A. Have wine tasting either free of charge or for a fee, including food pairings with the wine tasting, whether such food is free of charge or for a fee, but only within the tasting room.
 - B. May engage in promotional activities, including the ability to have groups on site in the tasting room only, such as political rallies or

other groups, so long as the group activity specifically promotes and focuses on the winery and agriculture with the township.

- C. Groups, guests and general members of the public visiting the winery cannot purchase wine or food outside of the tasting room and no fee for any group may be charged on premises or by the winery with respect to the visit by any group to the winery. No advertisement stating that such a fee will be charged by the group or by the winery for attendance at the winery is permitted.
- D. Whether it be a group, guests or members of the public visiting the winery during the hours that it is open, any charges for wine or food consumed on the premises in the tasting room must be based upon prices on the item or on the menu with no up charge for the same related to any event. Further, the winery-chateau cannot have a special menu item, whether it be for wine or food which is strictly offered to any group that is different or priced differently than what is available for other guests or members of public who visit the winery.
- E. Any items sold by the winery-chateau outside of food and wine must also be sold only within the tasting room.
- F. Entertainment may be provided by the winery-chateau, but shall only be allowed in the tasting room and no charge will be levied by any group or the winery-chateau such that guests or members of the public visiting the winery-chateau do not pay for the entertainment.
- G. All groups visiting the winery-chateau must congregate in the tasting room only and no group may be isolated either in the tasting room or anywhere else at the winery-chateau such that would prevent other guests and members of the public from having full and free access to the same area in the tasting room where the group may be congregating.

YES: _____

NO: _____

RESOLUTION DECLARED ADOPTED.

PENINSULA TOWNSHIP

By: _____
Rick Vida, Chair

I, the undersigned, the Vice Chair of the Township of Peninsula Zoning Board of Appeals, Grand Traverse County, Michigan, do hereby certify that the foregoing is a true and complete copy of certain proceedings taken by said Board at its regular meeting held on _____, 2016, relative to adoption of the resolution therein set forth; that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Dated: _____
Bernol Soutar, Vice Chair