

# PENINSULA TOWNSHIP

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## PENINSULA TOWNSHIP ZONING BOARD OF APPEALS MINUTES

January 16, 2024  
7:00 p.m.

1. **Call to Order** by Dolton at 7:00 p.m.
2. **Pledge**
3. **Roll Call** Dloski, Serocki, Dolton, Wahl, Dunn, Cram, Director of Planning and Zoning, Chris Patterson and Wayne Beyea, township attorneys
4. **Approval of Agenda** Dloski moved to approve the minutes with a second by Dunn.  

**Approved by consensus**
5. **Conflict of Interest** None
6. **Brief Citizen Comments – (for items not on the Agenda)** None
7. **Business:**

**1. Public Hearing for Request No. 912, Zoning = A-1 – Agricultural (Tabled from December 19, 2023, meeting)**

Applicant/Owner: Luke C Miller Trust, 2465 Carroll Road, Traverse City, MI 49686

Property Address: 11586 Center Road, Traverse City, MI 49686

1. Requesting an appeal to the zoning administrator's determination that concrete crushing is a heavy industrial use or activity and not allowed within the A-1 Agricultural District.

Parcel Code # 28-11-004-008-00

**Cram:** this property came to the township's attention in June/July of 2023. The enforcement officer, zoning administrator, and myself met Mr. Miller on the property to discuss the white concrete block office building and the piles of concrete and his plans to clean up the site. A demolition permit was issued by the previous zoning administrator in 2020. The permit allowed the demolition of 2 buildings on the property. One has been demolished and the other is still standing with a collapsed roof. The township is concerned about the public safety of the remaining building. Mr. Miller was looking to hire a contractor to crush the existing concrete on the property. The township responded to an email from Mr. Miller in September 2023 stating concrete crushing was not an activity allowed in the A-1 agriculture district. Under the zoning ordinance Section 6.6 details what uses are allowed by right in the A-1 Zone District and what uses are allowed by special use permits. Neither concrete crushing nor heavy industrial uses are listed as uses permitted. The zoning ordinance functions as a permissive zoning ordinance, so there is the assumption if something is not listed as being allowed, then it is not permissible. Mr. Miller is appealing this determination here tonight.

**Greg Luyt 7235 Henderson:** I am the attorney for the Millers. Mr. Miller is under the weather tonight.

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First, let me say the applicants want to be good neighbors. Cleaning up this property is a good thing for everyone. There are letters of support in your packet from neighbors and we are not aware of any opposition to the application. There was no attempt to hide the plan for crushing. The demolition permit was issued and allowed for concrete crushing. We had an EGLE permit issued. The substance of the appeal hinges on a determination whether this constitutes a heavy industrial use that is not specifically listed in the ordinance as permitted and therefore cannot be done. We see this as the wrong framework for the analysis. If you look at the definition of use under the ordinance, it is really directed at what the primary use of the property is. If you look at the list of uses permitted in the agricultural zoning district there are things like farming operations and migrant housing. I grant you if we were talking about establishing a commercial concrete crushing operation, the answer would be no. I would not even be here. That is not what we are talking about. This is temporary use that will take 5 days maximum. Nowhere in the zoning ordinance does it say construction or demolition is a permitted use or activity. No one would say you cannot do construction or demolition in the zoning district. The other point is there was no hiding what the intent was and before the demolition permit was issued, Luke Miller sent an email to the prior zoning administrator stating the plan was to crush the concrete. There was no additional discussion and the permit was issued. If the crushing was not going to be allowed, the Millers would not have broken up the concrete and put it in the state it is now if they knew they could not crush it. The permit reads demolition of the concrete pad and I think a fair reading would be crushing. I would also note this is the last page in the packet that was disseminated. In an email from Dave Sanger related to an interview he conducted on the property with Luke Miller in September, 2022. It confirms what everybody understood at this point. Sanger writes Luke was very cordial and told Sanger he had not been able to find a contractor to crush the old pavement. The one he had lined up this summer backed out. The former zoning administrator confirmed Luke had a demo permit for the work. That is an acknowledgement the demolition permit included concrete crushing. With regard to the EGLE permit, there is a memo in the packet that the permit was incorrect because the wrong county is listed. Miller's contractor did submit the application and there was an error when that was submitted, but the EGLE representative who came out to the property to talk with Miller confirmed the analysis of the permit was related to this property and this error was not material to the consideration of the permit. There is also a mention in the packet of a 500 foot setback that is true. This is why part of the mitigation measures was put in the EGLE permit because it was within that setback. In the packet, there is a statement to just haul the concrete away and this is not a viable alternative. We have been in discussions with other contractors and they state it would take 100's of truckloads to haul this away and then the Millers would have to repurchase the crushed concrete the Millers intended to use at the cost of hundreds of thousands of dollars. This appears as an undue burden. The other item is we do not want to tie this crushing to the other building still standing. The building has asbestos and the Millers are in the process of working to figure out the best remediation method. I am open to answer any questions.

**Cram:** thank you for the clarification on the EGLE permit. That permit has now expired and there would need to be another permit request.

**Luyt:** Correct.

**Cram:** with regard to the standing building, would there eventually be another concrete crushing request related to the building?

**Luyt:** I do not know the answer to this. I wish Mr. Miller was here. I can try texting him for the answer.

**Wahl:** so you want to know if the pile of concrete could be crushed and then what is proposed for the other buildings concrete?

**Luyt:** we know this is a permitted activity pursuant to demolition provided the appropriate requirements are met.

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**Wahl:** I think the apprehension might be because there is asbestos in that building; we want to know exactly what the plan for the building is. Did the demolition permit apply to just the building taken down already?

**Luyt:** it may have applied to both, but I think when the Millers encountered the issues with the standing building, the decision was to deal with what is there now in the broken concrete.

**Cram:** it was a warehouse that was demolished in 2021 and if you go back and look at historic pictometry there was a lot of concrete on the surface as well. This was broken up and put in the concrete pile as well.

**Wahl:** it sounds like your client does intend to use some of that concrete and that is the purpose of crushing what is on site.

**Luyt:** absolutely correct.

**Wahl:** he has no affiliation with Great Lakes Crushing; it is not his business and is an independent entity?

**Luyt:** correct and that is who they hope to get to do the work, provided they are available.

**Dloski:** if an appeal was granted, when would you start the work?

**Luyt:** we would start as soon as we possibly could get the EGLE permit, and the contractor was available. When we were here in December 2023, the contractor was available. We are not sure of the availability now. There are things that are outside of our control including when the EGLE permit is issued and the contractor's availability.

**Dunn:** how long will the work take?

**Luyt:** 5 days

**Dolton:** there were some allegations and I want to just clarify, was any additional concrete brought to the site?

**Luyt:** no. There was a complaint and it was actually sand brought to the site. This was investigated and the complaint is closed.

**Wahl:** do you know what your client plans to do with the property?

**Luyt:** I do not.

**Wahl:** he is not planning on running a concrete crushing business?

**Luyt:** no, and if that was the request, I would not even be here. That is not what is being requested.

**Dunn:** have you done a full environmental study on the asbestos in the standing building?

**Luyt:** no

Luyt finished his presentation.

**Dolton:** is there anyone who wishes to speak in favor of the request?

**Greg Fisher 12349 Center Road:** this issue has been going on for almost 3 years now. The primary issue with moving the concrete is money. The Cornerstone Construction Company originally ripped up all of the old brine pits of the old Kroupa property and they took the warehouse concrete and shoved it in the pile. At that time, the contractor gave Mr. Miller a price to remove the concrete, crush it, and sell it back to him for close to 6 figures. So, the owner of the property decided not to pay for it. The township is in dereliction of duty for allowing this to go on for so long. We now have the administration building for the Kroupa property, where the roof is caved in and the building is full of asbestos. So, every time it rains, guess where the asbestos material goes, into the soil. So how long are we going to continue having asbestos leaking into the soil? Every time I go to the board, the answer is we are working on it. There are people who live around the site who are thoroughly disgusted with looking at a concrete rubble pile for 3 years. In the meantime, Miller oil used it for construction site deposits, removal, deposits, removal. The owner of the property bought what he bought and he decided he wanted to clean it up, but he decided he did not want to pay for it. I know various people who offered to take the

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concrete and use it for fill and he doesn't want to pay for that either. So here we are back to crushing concrete and the site soil samples show the property is highly contaminated. For you to approve the crushing, which is fine, what are you going to do with it? Is it going to be left there in a crushed pile for another 2 years before they decide to haul it away or are they going to spread it on the ground? This is contaminated brine pit material from maraschino cherries and what are you going to do about the building? I do not think it is acceptable to wait until the owner decides to do something. The open roof continues leaking asbestos into the ground. I complained about the roof leaking, and he boarded up the windows so no one could see in. That was last year. I commend him for wanting to crush it, but what are you going to do with it? He does not want to pay to haul it away. The board has not done anything either.

**Dolton:** I am not sure if you are in favor of this proposal or against?

**Fisher:** yes, if he would haul it away. I do not care how they get rid of it, but the fact of the matter is this is contaminated material. My property has a 300 foot well and I have contaminants in my well. I have to use filters. The contaminants are from an old cherry orchard. Water usually goes down rather than going up, so whatever happens to the site, it needs to be cleaned up in the proper way. Not with a band-aid fix.

**Nancy R. Heller 3091 Bluewater Road:** I am in the same situation as the gentleman who just spoke. There is not enough information submitted to say yes or no to this request. I would like to express some of my concerns. If you agree to the crushing, I am concerned about dust for the health, safety, and general welfare of the residents. When you crush anything like this, you get particle drift. No matter how good you are, there will be particle drift. I'm wondering what to do with the surrounding soils, existing crops, or animals. The gentleman who just spoke was correct that the demolished building was used in the Kroupa operation. I have lived on this peninsula for 54 years. I am in the Ag business. I am wondering where liquid spilled or powder spilled on that concrete. If I were to do a remediation request, things would have to be done to that concrete. Once concrete is crushed and distributed as is being suggested, it dries. Activity on the area could create dust; is it safe? The attorney expressed the EGLE permit was issued in the wrong county. It seems everyone is expressing, but where is the proof? I am not calling anyone a liar, but there is nothing submitted from EGLE. There is also a request in the packet by the people who are doing the crushing. They say they have a permit, but how do we know what they asked for? How do we know what EGLE's rules are, and what was asked for? No copy of Baseline Environmental Assessments. If you approve this, you need to have some authority. Conversations are not acceptable proof in a court of law. You need valid proof. I am the first person to be hollering about private property rights. I appreciate the Millers wanting to do the right thing, but we do not know what the right thing is. You need to have valid documentation. I am very, very concerned about the health, safety, and welfare of the public. With agricultural property owners, if you want your product to go to the majority of the processors, they require what is called a GAAMP certification. I'll repeat again the health, safety, and welfare of the residents and the public are paramount.

**Donald Bor 2399 Carol Road:** I am an adjoining property owner. I also happen to be a retired developer, builder and I've done this exact kind of project before myself. We were required to have sprinklers running on the crusher to knock the dust down. I am pretty sure Luke (Miller) would get all the exterior concrete out when the crusher is there. It is not easy to get a crusher to come out for just 5 days. They want to set up for months on a project. I am in favor of getting it done and winter is an ideal time to do it.

**Dolton:** is there anyone who wants to speak in opposition to this proposal? Seeing none I am now closing the public portion of the meeting.

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**Luyt:** I just had a text. I can patch Miller by phone.

**Wahl:** so just to be clear, we are not dealing with the asbestos and the standing building?

**Luyt:** correct.

**Dolton:** the board does not seem to have any questions for Mr. Miller at this time. The ZBA is not responsible for enforcement. I would encourage the township to step up its enforcement. The attorney has laid out some options we should consider. Perhaps we should hear from the township attorney before we engage in our discussion.

**Dloski:** why?

**Wahl:** I would like to have our discussion first.

**Dolton:** Alright, who wants to start?

**Dloski:** To me, this is nothing but a construction operation. You are bringing in materials, you are laying the materials on the ground; eventually all of it will be gone. This is temporary. Put some restrictions on the project. This use of the land is not going to be permanent. I am inclined to grant the appeal.

**Wahl:** I agree in terms they are not putting up a crushing facility. This is incidental to the demolition permit. There is also email correspondence very specific to this piece of property that he would be crushing the concrete on site. This was communicated to the former zoning administrator, who then issued the permit. This is not something we would allow on every single demolition, but here the intent was known and the permit was issued. I think this is more incidental to the construction work. This is how he was advised by a contractor.

**Dunn:** basically, this is preconstruction as opposed to an actual construction use, so I would agree with this request.

**Serocki:** yes, I agree. This is a temporary situation. I do worry about the concrete having any residual lead paint or chemicals. This would be going into the ground water. If EGLE is permitted this, it must be known to someone.

**Wahl:** we do not regulate soil testing. I would assume the owner would want to get soil tests and test the air in the standing building for asbestos.

**Dolton:** I understand why the previous zoning administrator came to her determination. Our zoning ordinance is basically silent on demolition. The word does not appear anywhere in the ordinance, so we need to use the part of the ordinance which talks about uses in agricultural districts. Concrete crushing as a use by right or use by special use permit would not be allowed. What was not considered perhaps was whether or not concrete crushing and demolition is customary with respect to a large demolition project of this nature. It appears this is up to the person having the property demolished. In this case, my understanding is this material is going to be used on site and no additional materials from an external source are going to be brought onto this site. I concur that this feels like an adjunct to the existing demolition project. All of the permits have now expired. New permitting from the county would now be required. If we decide to go ahead with this, we will require the town board to issue the appropriate land use permit for this purpose. All of the appropriate mitigations outlined by EGLE or other regulations must be followed. This board is not in a position to create a policy or ordinance guidelines unilaterally, so I am reluctant to go down that path.

**Wahl:** this is a unique situation and we have to look at these on a case-by-case basis and the zoning administrator is going to have to look at them on a case-by- case basis. This needs to be based on the property, the use of the property, and buildings on the property.

**Dolton:** we do have a permissive zoning ordinance. If it is not delineated, it is not allowed. This is why there is an appeals process. It sounds like the board's preference is to affirm the zoning administrator's decision that this is not an allowed use per our ordinance in an agricultural district. The emails show it was authorized and this particular project was allowed to go through with appropriate conditions.

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**Dloski:** I move to grant the appeal and be subject to the crushing being started and completed within 5 consecutive working days, they have to implement certain controls for the dust; the material must be used on site, cannot be removed, and cannot be sold.

**Wahl:** I think we need to approve some parts and deny others. We are accepting the zoning administrator's determination as to use. The work can commence incidental to the demolition permit and the unique circumstances of the property. The property owner needs to abide by the EGLE requirements.

**Dolton:** we are not affirming concrete crushing is part of demolition. This has been described in 2 fashions, one being more general than the other. I am going to read the request as stated in the agenda as words matter here.

Requesting an appeal to the zoning administrator's determination that concrete crushing is a heavy industrial use or activity and not allowed within the A-1 Agricultural District.

The staff report reads the determination that concrete crushing as part of a demolition of an existing building or structure is a heavy industrial use or activity and not allowed within the A-1 agricultural district. I would like to hear our attorney's opinion.

**Chris Patterson:** the application filed by the applicant is twofold as it is stated on the agenda. It is the planning director and zoning administrator's determination under the zoning ordinance that this use is not permitted; therefore, the demolition permit could not have included crushing or otherwise be permitted. The words I have heard here are words like "grant, affirm, or approve". The terminology I would use since you are looking at this in an appeals perspective is to affirm the planning director and zoning administrator's part and then reverse in part allowing the activity or use to proceed forward as approved under a proper permit. As you have already noted with respect to the expiration of the permits and then providing those conditions that are relevant. I think the two items you quoted and stated really say the same thing, which is the reading of the zoning administrator of the zoning ordinance prohibition of allowing this activity to be approved. An appeal was filed, and the appellant has argued various arguments asking this to reverse in full based upon reasoning and the end result. The information we provided in our supplemental information does not go to the analysis of the question. The information helps to tell this body the options you have, which is the use of the terminology such as affirming in full that would then be the status quo. The activity cannot be conducted under the permit that was issued and expired or they could not get a new permit or affirming the analysis as a land use as it is not permitted. You could be reversing to the extent you are approving the activity because of the unique circumstances and the items noted by one of your ZBA members. You have 2 other options. This would be to reverse with some type of additional conditions.

**Dolton:** Dloski has a standing motion, is there a second for Dloski's motion? Hearing none, that motion fails. One of the items we need to talk about are the appropriate conditions. We have nothing in our ordinance other than noise and perhaps pollution. We need EGLE standards to control issues like on-site dust activity, containment, contamination. I do not think it is our job to tell them what to do with the product once it is crushed. They are making a recommendation this will be used on site. I do not think we can control other activities within an agricultural district, whether we can control the disposition of that property.

**Dloski:** what if they don't. What if they crush it and sell it?

**Cram:** if they crushed it and sold it, that would make it a commercial activity.

**Wahl:** it is not the owner of the property who is doing the crushing. It is a third party who would be bound by the EGLE permit.

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**Dloski:** the company could say I am going to crush it and then buy it from you.

**Cram:** this is one of the arguments Mr. Luyt made against hauling it away. There would be noise and potential road damage from having these heavy trucks needed to haul this amount away.

**Wahl:** if we affirm the finding by the zoning administrator's determination as to the use of the property, it limits what their abilities are. We are not changing the use of the property and we are not saying it's permitted. We are saying it is incidental to a demolition temporary crushing permit.

**Dolton:** could we say something like a minimum of 75% of the crushed product needs to be used on site. This will give the applicant a little leeway if they find they cannot use 100% of the product.

**Wahl:** you have a home; you are destroying your home and you are selling things to clear out the home. This could be an estate sale, or you are selling lumber still intact or whatever it is. We cannot control this. Here we have a zoned property in an agricultural district. This was a demolition permit; incidental to the permit they are allowed to do this. This is a unique situation, and we are not setting a precedent here.

**Cram:** I recommend the order this process would follow is first Mr. Miller obtain the EGLE permit, then to Peninsula Township for a demolition permit and a land use permit and finally the Grand Traverse Construction code permit. The work should be done in the wetter seasons with snow or rain.

**Dolton:** we can give the applicant reasonable timeframes such as 6 months from the date of approval on the permitting. Hopefully, EGLE will not take too long to reissue their permit. A timeframe should be put into place for the work, say 7 days. What does the client think is a reasonable timeframe Mr. Luyt?

**Luyt:** the issuing time of the EGLE permit is out of our control and contractor availability is another issue out of our control as is the weather (goes to call Mr. Miller).

**Dolton:** what are the timeframes for permits?

**Cram:** a land use permit is good for 1 year and he could come in for an extension prior to the land use expiring.

**Dolton:** it seems reasonable to get this done within 6 months and they know they can come in and ask for an extension.

Mr. Miller calls in on the conference phone line.

**Cram:** the question is how long do you think it will take to get the EGLE permit and can you do the work in the wetter season?

**Miller:** EGLE said they could turn the permit around with the correct county on the permit. Our first application was an 8 month process where we had to ultimately hand deliver our permit to EGLE because they said they were only in the office every 2 weeks. When I spoke with them 2 weeks ago, they said it should not take long, but this is the state and things don't always go as planned.

**Cram:** and then Great Lakes Crushing, the company you have hired to do the work for you, do you have any idea of their availability?

**Miller:** we are a very small job, so if he runs into problems on other jobs, this might delay the work being done.

**Cram:** so, if this board allowed you to move forward with the temporary crushing of concrete associated with a demolition permit and they put a timeframe for this to be completed within 6 months and of course you could come in and apply for an extension if something did not go right, do you think this gives you a good opportunity to complete this?

**Dolton:** do you have to delineate concrete crushing as an activity of demolition with the county or not.

**Miller:** I do not know how the county looks at a demolition permit.

**Cram:** so, the concrete you are crushing is surface concrete and not something from the demolished building?

**Miller:** the building removed was made of metal and the floor was concrete. There was no concrete in

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the building itself.

**Wahl: I move to affirm the zoning administrator's decision, but due to the unique circumstances associated with the demolition permit to allow the concrete crushing to commence as to the building that has already been demolished in light of the applicant's obtaining an EGLE permit and a county permit, and appropriate land use permit as well as the work being completed within 6 months. The applicant does have the right to apply for an extension if necessary with a second by Dunn.**

Roll call vote:

Yes-Dunn, Wahl, Serocki, Dloski, Dolton  
Request 912 is approved,

**Approved Unanimously**

## **2. Public Hearing for Request No. 913, Zoning = R-1C – Suburban Residential**

Applicants: Greg and Janet Heinlein, 886 Rosastone Trail, Houston, TX 77024

Owners: SGBR 2007 Management Trust, 886 Rosastone Trail, Houston, TX 77024

Property Address: 7470 East Shore Road, Traverse City, MI 49686

1. Requesting to replace an existing two (2) story non-conforming structure per Section 7.5.6.
2. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a new two (2) story single-family residence with attached garage 18 feet from the front property line/edge of right-of-way, where 25 feet is required.
3. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a new two (2) story single-family residence with attached garage 44 feet from the ordinary high water mark, where 60 feet is required.

Parcel Code # 28-11-030-023-00

Cram gave an overview of the request.

**Dloski:** what is the square footage of the house there now?

**Cram:** I do not know.

**Dloski:** what is the square footage of the proposed house?

**Cram:** I do not know.

**Dolton:** the applicant should know this. Are they going to be within the lot coverage?

**Cram:** yes.

**Dolton:** do we know what the additional space will be used for?

**Cram:** the proposed addition to the north is for storage space off of the garage to keep gardening equipment and the addition to the south would be an activity room and a bedroom. The master bedroom would be on the main level as the home is intended to allow the property owner to age in place.

**Wahl:** will they need a demolition permit?

**Cram:** yes, they will need to come in and apply for a partial demolition for the roof and the main level of the house and then a land use permit for the new construction.

**Wahl:** and is the setback certification part of this?

**Cram:** this would be part of the land use permit and that is to confirm the setback of the existing eaves.

**Dolton:** let's hear from the applicant.

**Greg Heinlein 7470 East Shore Road:** our home is non-conforming. The home was built in 1970, before the zoning ordinance was in place. The lot slopes toward the water. To summarize, we are not adding an additional floor, we are simply raising the walls and the roof line still within the maximum heights

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allowed. We are adding new construction with 2x6 walls as opposed to 2x4 walls to have better insulation value. We are asking for a variance under 7.5.6 to replace a non-conforming structure on an existing foundation, to raise the walls and roof. We have filled out the application with what we believe to be solid information with good, descriptive answers and hope it speaks for itself. We have offered less non-conformity for the ordinance by taking 2 feet off of the garage from the water edge and staying within the front setbacks. The net is 9 inches off the garage and if any of you appreciate your garage as many people do losing 9 inches is precious real estate. We prepared the certification of the architect tonight as requested by Cram to have the reduction of the eaves. When you are raising the slope of the roof, you end up with smaller eaves so we are going from 24 to 18 inches. This concludes our remarks and I will take any questions you might have.

**Dolton:** any questions for the applicant?

**Wahl:** I have a question for Jenn (Cram). Would he not need variances if this was a legal, conforming lot.

**Cram:** correct. We are here because they are replacing a non-conforming structure and the replacement still does not meet the setbacks.

**Dolton:** Is there anyone who is in favor of this request? Seeing none is there anyone who wishes to speak in opposition to the request. Hearing none, I now close the public portion of the meeting and bring it back to the board for discussion. There are additional conditions when the structure is going to be replaced under 7.5.6 and then all 6 conditions must be met. I would like to ask counsel if variance request 1 is approved, could we take the requests 2 and 3, which are dimensional requests at the same time?

**Patterson:** are you asking if you have to go through the conditions for each of the 3 requests? As there are overlapping factors in all 3 requests, I have no problem with combining those.

**Cram:** if we run through the standard for 7.5.6, I have no problem combining all 3 requests under the 6 basic conditions.

**Dloski:** is the reason for this variance the expansion of the footprint of this home?

**Cram:** the reason for the variance is because section 7.5.6 says the township zoning board of appeals may grant a variance for moving or replacing a residential structure on a legal, non-conforming lot so the continued intensity of residential use is substantially the same as in the pre-existing structure provided all the conditions are met. They are removing an existing structure and the replacement structure still does not meet the required setbacks.

**Dloski:** can the structure be re-constructed meeting all of the zoning ordinance requirements?

**Cram:** if you look at what the constraints are, they would be limited to a building that is this narrow because here's the 60 foot setback and this is the existing structure (referring to site diagram) that is non-conforming and here is the front yard setback. So, this would create a funky, little triangle in order to meet all of the required setbacks. They are proposing to reuse the existing foundation and just replace the main level, which would be an improvement.

**Wahl:** it is my understanding they are just tearing down walls and putting them back up.

**Dloski:** they are expanding by putting in a structure off the garage.

**Cram:** the additions do not require a variance because they meet the setbacks.

Dolton would entertain a motion to go through the requirements for Section 7.5.6.

**Dunn moved to consider a request to replace an existing two (2) story non-conforming structure per Section 7.5.6 with a second by Wahl.**

Roll call vote:

Yes: Serocki, Dunn, Wahl, Dloski, Dolton

**Passed Unanimously**

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**Dolton:** Section 7.5.6 concerns the moving or replacing of a non-conforming structure. Item 1 requires “the moved or replaced structure must be less non-conforming than the previous structure”. Any discussion that the eaves on one side will be reduced by 6 inches and the garage will be moved by 2 feet.

**Wahl:** yes, they are making it more conforming.

**Wahl, Dloski, Serocki, Dolton, Dunn verbally approve this condition has been met.**

**Dolton:** Item 2 requires “there is increased safety to the residents of the structure and to the traveling public on the road providing access to the parcel”. I am not sure this is even applicable in this case.

**Wahl:** I agree they are replacing this with a more conforming structure.

**Dolton:** I will entertain a motion that this condition is non-applicable.

**Dunn moved this condition is not applicable with a second by Serocki.**

Roll call vote:

Yes: Wahl, Serocki, Dolton, Dunn, Dloski

**Passed Unanimously**

**Dolton:** Item 3 requires “safety and substantial justice is achieved”.

**Wahl:** safety is not really applicable here because the proposed location of the replacement is the same as the existing structure with the exception of reduction of the eaves

**Dolton:** asks Cram about the element of safety.

**Cram:** it is not in the road right-of-way and it is staying in its existing location. Substantial justice is served by allowing them to replace the structure using the existing foundation making it less non-conforming by reducing the eaves.

**Dolton:** I will entertain a motion that item 3 is achieved.

**Dunn makes a motion that safety and substantial justice is achieved with a second by Wahl.**

**Dolton:** please justify the reason for your vote.

**Wahl:** yes, for the reasons stated in the staff report.

**Serocki:** yes, for reasons in the staff report.

**Dunn:** yes, for the same reasons.

**Dolton:** the comments in the staff report are germane here.

**Dloski:** yes, for the reasons previously stated.

**Dolton:** the house does not encroach into the ordinary high water line any further. The ordinance reads:

If the variance allows the structure to encroach into the setback from the Ordinary High Water Line, conditions of approval shall include:

- (a) provisions for stabilization of the shoreline so that the structure is not likely to be damaged by high water or wave action;
- (b) there is no additional detriment to adjacent properties;
- (c) shoreline vegetation is existing or established consistent with the intent of Section 7.4.4 Removal of Shore Cover ; and

- (d) sea walls will not be allowed unless it is determined that there is no feasible alternative

**Cram:** if you look at the staff comments based upon what they are proposing, they are using the existing foundation and not getting any closer to the ordinary high water line. There is no need for stabilization of the shoreline, they are not going to be removing any existing vegetation, and there are no sea walls proposed. Even though the existing structure and the proposed structure do not meet the setback from the ordinary high water mark, this standard is not applicable based on the reconstruction.

**Dunn made a motion this standard has been met with a second by Wahl.**

Dolton: yes, for reasons Cram just stated.

Dunn: yes, for reasons stated.

Serocki: yes, for items stated in the staff report.

Wahl: yes, for reasons already stated.

Dloski: for reasons stated.

**Passed Unanimously**

**Dolton:** we will now be evaluating all 3 variances requests under 5.7.3

1. Requesting to replace an existing two (2) story non-conforming structure per Section 7.5.6.
2. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a new two (2) story single-family residence with attached garage 18 feet from the front property line/edge of right-of-way, where 25 feet is required.
3. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a new two (2) story single-family residence with attached garage 44 feet from the ordinary high water mark, where 60 feet is required.

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

(a). That the need for the variance is due to unique circumstances or physical conditions, such as narrowness, shallowness, shape, water or topography, of the property involved and that the practical difficulty is not due to the applicant's personal or economic hardship.

Dloski: yes, for the reasons stated during this hearing.

Dolton: yes, they are working off the existing foundation and this is a unique circumstance and not due to the applicant's activities.

Dunn: yes, for reasons previously stated.

Serocki: yes, the lot is shallow.

Wahl: yes, for reasons previously stated and the staff report.

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

Dolton: yes, this property was built before the zoning ordinance was in place and the circumstances were not created by the owner or previous owners.

Dloski: yes, for the same reasons.

Serocki: yes, for the same reasons.

Dunn: yes, for reasons already stated.

Wahl: yes, for the same reason.

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

Dunn: yes, for reasons previously stated.

Serocki: yes, the staff comments explain this well.

Wahl: yes, based on the staff comments and this is a unique piece of property and I do want to emphasize under this plan, they are not increasing the non-conformity and are actually decreasing non-conformity.

Dloski: yes.

Dolton: yes, while it would be theoretically possible to build and meet all of the requirements, it would be unnecessarily burdensome.

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

Dunn: yes, for reasons previously stated.

Serocki: yes, staff comments cover it well.

Dloski: yes, for reasons previously stated.

Dolton: yes, for reasons previously stated.

Wahl: yes, for reasons previously stated.

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

Dolton: yes, I think this may enhance the neighborhood

Dloski: yes.

Wahl: yes, I agree with Dolton's comments.

Serocki: yes, I also agree with Dolton's comments as well.

Dunn: yes, I agree with Dolton as well.

(f). That the variance shall not permit the establishment within a district of any use which is not

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permitted by right, or any use for which a conditional use or temporary use permit is required.

Dolton: yes, there is no change in use by right. It is zoned residential and remains residential.

Wahl: yes, the condition has been met.

Serocki: yes, I agree staff comments covered this well.

Dunn: yes, condition has been met by what has already been stated.

Dloski: yes, there is no change in right.

**Cram:** there were unanimous yes votes on the special conditions for moving or replacing a non-conforming structure (7.5.6) with the other 2 variance requests meet the additional 6 Basic Conditions.

Dolton: all three variances have been approved. Request 913 is approved.

**8. Approval of Minutes from the December 19, 2023, Meeting: Dunn moved to approve the minutes with a second by Serocki. Approved by**

**Consensus**

**9. Citizen Comments none**

**10. Board Comments**

**Dloski:** do we need to have legal counsel at every ZBA meeting? We are spending so much money on legal fees.

**Wahl:** we needed them here tonight as the first case was a tricky one.

**Cram:** it is my experience, especially for the ZBA, that legal counsel is always present to answer questions. I understand fiduciary responsibility, but I think it is necessary to have legal counsel here based on the responsibility this board has for reviewing variances and appeals.

**Dloski:** since I have been on this board, this is a new policy because we did not have lawyers at every meeting and we seemed to function pretty well. We have got to do something to control these legal costs.

**Wahl:** the first case was an appeal case, which I have never done before on this board. It was helpful. There are 3 attorneys on this board.

**Dunn:** I was on another ZBA board for 12 years and we had lawyers there probably 4 times.

**Dloski:** I would be comfortable with Dolton talking to the planner regarding requests and determine if they think legal counsel needs to be present or just provide them with information before the meeting and not necessarily attend each meeting.

**Dolton:** I would be comfortable with that, and I would also be comfortable deferring to Jenn's (Cram) opinion on a case-by-case variance request.

**Dloski:** I disagree we need legal at every meeting.

**Dolton:** I am willing to talk with Cram regarding each case and see if we think legal counsel needs to be present. We can see how that works going forward.

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**11. Adjournment Dloski moved to adjourn with a second by Dunn. Approved by Consensus**

Adjourned at 8:58 p.m.