

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

13235 Center Road  
Traverse City, MI 49686  
February 14, 2019  
7:00 p.m.

1. **Call to Order** Soutar (Chair) called the meeting to order at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Soutar (Chair), Wahl, Dolton, McBride, Couture, Deeren (Director of Zoning)
4. **Approval of Agenda** Wahl moved to approve the agenda. McBride second. **PASS UNAM**
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for Items not on the Agenda** None
7. **Approval of Minutes from November 8, 2018** Two corrections to be made. Change spelling of names. Donlon to Dolton and Kelly to Heller. Wahl makes a motion to approve the minutes. Dolton second. **PASS UNAM**
  
8. **Business**

**A. Request No. 872, Zoning R-1A**

Applicant: Jessica VanHouzen Stroud, 607 W. Orchard Dr., Traverse City, MI 49686

Owner: Richard and Susan Caputo, 24800 Fairmont, Dearborn, MI 48124

Property Address: 2032 Phelps Road, Traverse City, MI 49686

1. Requesting a variance of 6 feet from the required 15 feet side yard setback on the south property line on a legal non-conforming parcel of record in order to construct an addition to an existing residential structure.

Parcel Code: #28-11-109-034-00

**Jessica Stroud 607 W. Orchard Dr. Traverse City, MI 49686**

I am representing Richard and Susan Caputo, the owners of the house at 2032 Phelps Road, Traverse City, MI 49686. The Caputos want to put a small addition on the house, most of which is within the setbacks. The part that does stick out does not stick out any further to that side than what is already non-conforming. This is a 50 foot wide lot. The zoning ordinance was written for 100 foot lot minimums. This house was built before the zoning ordinance. We are trying to do the minimum amount possible to meet their needs. We are not trying to push out further to the side than we already are. They are adding a second story over a portion of the house, which includes the section of the house where we are

asking for the variance. That is about it for me so do any members have questions for me?

**Wahl:** So, you are only moving from the lower level 6 feet and then the upper level is going to extend further, is that correct?

**Stroud:** No, it is still going to be the same footprint. Part of the second level will be over the portion of the house that is currently conforming.

**Deeren:** So, this is not going to protrude out any further than the existing chimney? You are going to take the chimney out, put on the addition, and then move the chimney down.

**Stroud:** If you look at the floor plan, the chimney does not make sense with the new addition. The top of that chimney is for a one-story house, so if we were going to do that we would need to add onto the chimney. It just makes more sense to redo it.

**Couture:** The house directly to the south, is there an extra lot between there or is it just a part of the lot?

**Stroud:** I do not believe so. The people who own that house to the south are here.

**Deeren:** No, this is the smallest lot on Phelps Rd. In looking toward, the south it can make this lot appear larger.

**Wahl:** I guess I get confused when you say the footprint is not any bigger than where the existing chimney is located.

**Stroud:** I meant that it is not protruding any further to the side on the south.

**Soutar:** It looks here like the floor plan that there was a stair well going up; there are some dotted lines there...

**Stroud:** There is no staircase right now. There is no second story to the house.

**Soutar:** The one that is emphasized by the solid line, is that where you are going to build the stair case?

**Stroud:** I think if you look at the second story floor plan, it becomes a little bit clearer. That is just how the owners wanted to do it.

**Soutar:** When I was out there, I found one stake in the water. Are there any other stakes out there or is the fence right on the property line?

**Stroud:** From the survey, it looks like the fence is right on the property line.

**Soutar:** If there are no questions from the board, is there anyone here who wishes to speak in favor of the applicant?

### **John Rydzewski 2014 Phelps Rd.**

I am the neighbor directly to the south of this house. I have talked with the owners and they have shared their detailed plans. We support what they are doing. Our only concern is any truck traffic going over our property as we have just installed a new septic field and tank. I just want to put that in the record that no truck traffic goes over there.

**Soutar:** That is a valid concern and there is something we may be able to do about that. Is there anyone else who would like to speak on behalf of the applicant?

### **Dave Merrell 2046 Phelps Rd.**

I am the property owner to the north. We have known the property owners for a very long time. They are summer residents and are very conscientious people. The narrow lot can cause the wind to be funneled down between our properties, but this does not appear to be a problem. This will not affect my property as much as my neighbors to the south. I know the property owners want to have this expansion and I am very comfortable with the plans as they have been drawn.

**Soutar:** Is there anyone else who would like to speak on behalf of the applicant? There being none, is there anyone who wishes to speak against this proposal? As there is no one, this closes the open session of the meeting. I will now bring this back to the board for discussion.

**Wahl:** I would be in favor of supporting this proposed variance with the stipulation that the construction work does not go over the neighbor's property on the south side.

**McBride:** I would support the proposal as well provided that the fireplace chimney is moved.

**Dolton:** I think it would be helpful to go through the 6 conditions. I support this as long as there is no more movement to the south.

**Couture:** When we have an existing non-conforming use and are asked to grant a variance that would increase the non-conforming use, I guess I have a philosophical issue with that. We have a Zoning Board so that we have uniform standards. When we have a non-conforming use, to grant a variance to increase that non-conforming use, is this something we have done in the past or is it done on a case-by-case basis?

**Wahl:** My experience tells me it is done on a case-by-case basis. My being in favor is that there already is a fireplace and, in my opinion, it is already non-conforming and we are just shifting the non-conforming area.

**McBride:** I think that what you are getting to is that we don't want to make things more non-conforming; in general, that is our purpose.

**Soutar:** There are two things here that are non-conforming. The biggest issue for me is the chimney. I cannot grant this variance without the removal of the chimney. The fact that you are moving the chimney is the only saving grace for us coming to some type compromise. I do not support this the way it is proposed as this makes two more items that are not going to be in compliance. If the chimney was to be removed from the south side, that would remove the most egregious problem with the variance because now you have a full 6 to 9-foot area to walk along the south side of the house. If you are willing to take the chimney out that is the only way I will look at adding 6 feet to the required 15-foot side yard setback. Nothing we are getting here is making it a less non-conforming variance. You have to give us something in that you are already using non-conforming construction. Does this change anybody's mind on this?

**Dolton:** I hear what you are saying on this. Because of the extension we are continuing the non-conforming and if I understand this, the extension is to the west. If I look at the detail, the chimney does not extend further south. I do not see how their request restricts any additional movement on the south side.

**Soutar:** They are going to need to remove the chimney. There is restricted access there. I

want better access along the side of this house and that is what the law is meant to do. You could not get a fire truck back there. With the chimney there, you could not get a car back there. Maybe a hand cart could go through that space and that is about it.

**Wahl:** Are you going off what you saw when you visited the property?

**Soutar:** Yes, and that is why you want to go look at it. It is really narrow out there. I would be willing to give them something if they give us this.

**Dolton:** If the fireplace was not removed?

**Soutar:** Then there is no way I could approve this. This house should never have been built in the first place and it is now grandfathered in. We need to be careful in what we approve as others would think they have carte blanc to do whatever they wish.

**Soutar:** The Board will now go through the 6 Basic Conditions that must be met.

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

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

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

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

Wahl, Dolton, Soutar, McBride, and Couture **all agree** the condition has been met if the chimney is removed. This makes it less non-conforming.

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.)

**Soutar:** Again, this is a single-family home and the request does not really change that. It would not be burdensome to them.

**Couture:** Why would the adherence to the setbacks be unnecessarily burdensome? They would not be able to expand their house, would not be able to increase the use of their lot and it might be burdensome to restrict them when they have such a small lot.

**Wahl:** The house was created before the zoning ordinance, so they purchased it that way.

**Dolton:** I would agree that it is necessarily burdensome as they would not be able to do an expansion of the home in a direction that is in compliance with the setbacks to the west if they have to leave the setback to the south.

Wahl, Dolton, Soutar, McBride, and Couture **all agree** the condition has 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.

**Soutar:** The removal of the chimney would be the substantial justice. That would give them much better access on the south side of the property.

Wahl, Dolton, Soutar, McBride, and Couture **all agree** the condition has 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.

**Wahl:** Both the neighbors to the north and south agree with the project.

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

6. That the variance shall not permit the establishment within a district of any use which is not permitted by right, or any use for which a conditional use or temporary use permit is required.

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

**Soutar:** All 6 conditions must be met for us to proceed. Calls for a roll call vote.

**Dolton:** Yes, with the chimney removed.

**Soutar:** Yes.

**McBride:** Yes

**Couture:** Yes

**Wahl:** Yes

**Soutar:** I would like to add one codicil to this request; that a fence is built between the neighbor's property to the south during construction to protect the neighbor's property. Calls for a voice vote.

**Soutar:** Yes.

**McBride:** Yes

**Couture:** Yes

**Wahl:** Yes

**Dolton:** Yes

**Soutar:** We need to add another codicil that states the chimney will be removed from the south side to any interior space or area on the property that is conforming.

**McBride:** Yes

**Couture:** Yes

**Wahl:** Yes

**Dolton:** Yes

**Soutar:** Yes.

**Action-Motion** Soutar calls for a vote that Request No. 872 be granted and includes those two codicils.

**Couture:** Yes

**Wahl:** Yes

**Dolton:** Yes

**Soutar:** Yes.

**McBride:** Yes

**Soutar:** You are approved, with reservations.

**9. Citizen Comments** None

**10. Board Comments** The next Zoning Board of Appeals meeting is set for March 14, 2019 at 7:00 p.m. There is a case in March.

**Deeren:** Requests the Zoning Board consider meeting the third Tuesday of each month with a start time of either 7:00 p.m. or 6:00 p.m. This change would begin in April, 2019. The decision of this change will be discussed at the March, 2019 meeting. The meeting calendar has not been adopted yet by the Town Board. Deeren stressed the importance of site visits to properties making requests.

**11. Adjournment** Wahl moves to adjourn the meeting and Couture seconds. Meeting adjourned at 7:45 p.m.

Lola Jackson

Recording Secretary