

Peninsula Township
Zoning Board of Appeals
Regular meeting
March 15, 2022 7:00 p.m.
Lola Jackson Recording Secretary
MINUTES

**PENINSULA TOWNSHIP
REGULAR MEETING
ZONING BOARD OF APPEALS AGENDA
13235 Center Rd., Traverse City, MI 49686
March 15, 2022 7:00 p.m.
Corrected on 7/19/22**

1. **Call to Order** by Dolton at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Dloski, Soutar, Dolton, Wahl, Elliott
Deeren, Zoning Administrator Meihn: Township Attorney on teleconference
4. **Approval of Agenda** Dloski moved to approve the agenda, second by Elliott. **passed unam**
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None

Business:

1. Request No. 899, Zoning R-1B

Owner: Josephine M. Roek, P.O. Box 3181100, Clinton Township, MI 48038

Applicant: Josephine M. Roek, P.O. Box 3181100, Clinton Township, MI 48038

Property Address: 15390 Bluff Road, Traverse City, MI 49686

1. Requesting a variance from the required sixty (60) foot setback from the ordinary high water mark to eighteen (18) foot setback from the ordinary high water mark in order to construct a 20 ft by 30 ft deck.
2. Requesting a variance from the required fifteen (15) foot side yard set back on the southerly property line to six (6) ft from the property line in order to construct a 20 ft by 30 ft deck.
3. Requesting a variance from the required sixty (60) foot setback from the ordinary high water mark to fifteen (15) foot setback from the ordinary high water mark in order to construct a 4 ft by 20 ft walkway.
4. Requesting a variance from the required sixty (60) foot setback from the ordinary high water mark to twenty-one feet in order to relocate an 8 ft by 16 ft shed.
5. Requesting a variance from the required fifteen (15) percent lot coverage to twenty-two point six-one (22.61) percentage in order to construct a 20 ft by 30 ft deck and a 4 ft x 20 foot walkway.

Parcel Code # 28-11-114-011-00

Jayson Welser 2628 Hidden Ridge Ct. Grayling Representing the owner

Both the deck and walkways are in disrepair. The deck is 12x30. The owner wants to put a guard rail up for the safety of her grandchildren and herself. I would be happy to answer any questions.

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Dloski: we request the applicant fill out a questionnaire to explain how the basic conditions are met and this comes to the board in a packet of materials. There is no description as to how the basic conditions were met; it just lists all as being met. This is not a completed application.

There are some concrete block stairs going down on the south side, are you moving those?

Welser: those stairs are sloped really bad and need replacing.

Dloski: rebuilding those steps is not part of the variance request. Why do you need to rebuild steps on the north side if you are replacing steps on the south side?

Welser: we were going to just leave as a path and not steps. We don't need to do this.

Dloski: would this serve as an access point for construction equipment getting down to the beach?

Welser: yes, and it would be nice to have access to the beach from both sides when construction is complete. We could leave the north side as a gravel path.

Dloski: the shed is almost right on the water and you are going to move it back onto high ground?

Welser: we want to rotate the shed back into the hill as much as possible. This will be the shed currently there; we are just rotating it and moving it back.

Dloski: why not just rebuild the existing deck that is there? You would not need a variance to do that.

Welser: she is not in good health and wants to have a safe area for her grandchildren and herself. She can no longer go down the stair to the beach, so this is her only access point to the outdoors.

Soutar: we are going to need to see an elevational change for the additional sand. You are also planning to extend the rip rap. Have you talked to the Army Corps of Engineers about this?

Welser: we need your approval before going to the Army Corps of Engineers.

Soutar: so we could make their approval part of our ruling?

Welser: yes.

Deeren: for a rip rap you need the Army Corps of Engineers, EGLE, soil erosion, and Peninsula Township all giving approval.

Soutar: the current deck was built in 1987. Was it permitted?

Welser: I do not know.

Soutar: if it was not permitted, then it would not be grand fathered in, unless it was built before 1972, when the zoning law was passed.

Deeren: I did not find in permits.

Soutar: in terms of lot coverage, I show lot coverage of 15.2, which does include the existing deck. Questions accuracy of lot coverage numbers.

Elliott: when you say concrete, is this the disrupted pavers you are going to rip out and redo?

Welser: yes.

Elliott: what are the plans for the trees?

Welser: we will not be cutting down any trees. There is a big tree at the corner of the deck and we would go around it.

Wahl: asks Deeren if this decision affects EGLE.

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Deeren: no.

Dolton: you mentioned that the existing, crumbling pavers were undermined by the water level, is that at the water level now?

Welser: no, it is above it.

Deeren: on the survey, the ordinary high water mark is at the break wall.

Dolton: keep in mind that this is a non-conforming property, none of which could be built today.

Deeren: all of this improvement extends 43 feet over the existing property line.

Welser: if the adjacent property owner asks for any of this to be removed, she would remove it. The angles of the property are severe and they just assumed it was a square with the road. She is friends with the neighbors who have passed the land onto their children.

Deeren: all the neighbor would have to do is come in and obtain a demolition permit to have those items removed.

Wahl: I just do not see a compelling reason to expand these items. The current deck could be replaced and made safer using the current size.

Welser: she is already losing 43 feet of property to the neighbor and cannot go down to the beach level anymore, so she wants to utilize as much as possible by expanding the deck.

Dloski: when did the applicant buy the property?

Welser: I do not know, a long time. I can call her right now.

Dloski: does she live there full time?

Welser: no.

Dloski: does she want to fix it up to sell the property?

Welser: no, she and her husband live down state. She and her husband developed Mission Hills, Mallard Drive, and they have a vineyard up there. This is their only residence on the peninsula. They have 600 feet of frontage on Bluff Road where the erosion problem is occurring. They have to go around getting to this property, which is a pain for them.

Elliott: so we really don't know if this is grandfathered in.

Deeren: I do not think the shed and deck are grandfathered in.

Soutar: I would like to contest the figures for lot coverage. My calculation shows it as 1,527 square feet and the parcel is 9,583 square feet, which makes it 16.6 % lot coverage. If you add on the walkway and increase the deck size, you end up with 19% give or take.

Deeren leaves the meeting at 7:40 p.m. to get lot information from township assessor's records.

Welser: the owner just let me know they purchased the home in 1988. How is lot coverage calculated?

Dolton: anything above grade is counted. An asphalt driveway is not counted if at grade level. Deeren returns at 7:45 p.m. and makes the lot coverage calculation, which is 1,465 square feet.

Dolton: does this include overhangs?

Deeren: yes, lot coverage comes to 19.28 with the new items.

Dloski: on the south side of the shed there is a wooden walkway going to the water; what are you doing with this?

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Welser: that can just be removed if it helps the calculation.

Dolton: you show a dock over the property line. What is the plan for the dock?

Welser: it's just a wood sea wall.

Dolton asked if there was anyone in the audience in favor of the project; seeing none asked for anyone who is against the project.

TJ Andrews 619 Webster Street Traverse City: I am here on behalf of the Watershed Center Grand Traverse Bay. For clarification, using Google maps my lot size is 800 square feet less than the number being used here on the impervious surfaces. The Watershed Center is concerned with water quality. We urge townships to adopt water setbacks, to limit encroachments into those setbacks, to adopt and apply vegetative buffers from the water, and to eliminate hardened surfaces. Peninsula Township employs all of these in the zoning ordinance toolbox. We are concerned when we see an application requesting significant hardening of the shoreline when these structures could not be built today. I would like to point out section 6.2.2.2d of the zoning ordinance which indicates the deck would be allowable, but not the concrete area. The ordinance 5.7.3 talks about decks at the shoreline, which was not addressed by the applicant. The variance requests would exacerbate all of the non-conformities rather than moving toward conformity. A straight rebuild of the existing items appears all that would be allowed. We think building too much, too close to the water's edge puts private property owners at risk and you are not talking hypothetical when you see the eroded condition of Bluff Road on the peninsula. When you harden surfaces, this prevents the use of vegetative buffers at the shoreline (see Watershed Center letter at end of minutes, which was passed out during meeting).

Dolton brings the discussion back to the board.

Dloski: what is the shed used for?

Welser: garden tools, beach equipment, paddles.

Soutar: what is the lot coverage number again?

Deeren: 1848 square feet. I took the lot size off of the assessor's record and if you look at the road right-of-way, it looks like it was cut out of the equation. The lot is 95.83.

Dloski: on page 4 of Watershed Center letter we received tonight, Item 3 clearly identifies these structures as a non-conforming. I can see maybe moving the shed back, but I do not support these variance requests.

Elliott: This is increasing intensity of use on a non-conforming lot. I do not support this request.

Dolton: if the deck and concrete area went in before the 1972 zoning ordinance, then this would be grandfathered in, if not, this would probably need to come out.

Deeren: there is no request for any variances in the town records. The house was built in 1965.

Soutar: the board does not have enough information to be fair to the applicant and to the township. The shed seems ok to me, the sand is not our purview, and I can accept the stair well down to the water. The deck can be replaced, but not enlarged.

Dolton: can we approve a lesser variance?

Deeren: can only approve or disapprove what was asked for. This request has been published in the Record Eagle and the neighbors notified.

Wahl: moving the shed would reduce the non-conformity of the property.

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Dolton: now the board entertains a motion to go through the 6 conditions for each variance request.

Dloski moved to **consider variance request 1 with a second by Elliott. passed unam**

1. Requesting a variance from the required sixty (60) foot setback from the ordinary high water mark to eighteen (18) foot setback from the ordinary high water mark in order to construct a 20 ft by 30 ft deck.

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.

Yes: Wahl, Dolton, Soutar Condition has been met

No: Elliott, Dloski Condition 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.

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition 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.)

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition 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.

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition 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.

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition has not been met

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

Yes: Wahl, Dolton Condition has been met

No: Elliott, Dloski, Soutar Condition has not been met

Dloski moved Variance Request 1 be denied with a second by Elliott.

Yes: Dloski, Soutar, Dolton, Wahl, Elliott

passed unam

Deeren: Variance Request 1 is denied.

Wahl moved to **consider variance request 2 with a second by Elliott. passed unam**

2. Requesting a variance from the required fifteen (15) foot side yard set back on the southerly property line to six (6) ft from the property line in order to construct a 20 ft by 30 ft deck.

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

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Yes: Dolton, Soutar Condition has been met

No: Elliott, Dloski, Wahl Condition 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.

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition 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.)

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition 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.

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition 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.

Yes: Dolton Condition has been met

No: Elliott, Wahl, Soutar, Dloski Condition has not been met

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

Yes: Wahl, Dolton Condition has been met

No: Elliott, Dloski, Soutar Condition has not been met

Wahl moved that Variance Request 2 be denied with a second by Elliott.

Yes: Dloski, Soutar, Dolton, Wahl, Elliott **passed unam**

Deeren: Variance Request 2 is denied.

Wahl moved to consider variance request 3 with a second by Elliott. **passed unam**

3. Requesting a variance from the required sixty (60) foot setback from the ordinary high water mark to fifteen (15) foot setback from the ordinary high water mark in order to construct a 4 ft by 20 ft walkway.

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.

Yes: Dolton, Soutar Condition has been met

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No: Elliott, Dloski, Wahl Condition 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.

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition 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.)

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition 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.

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition 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.

Yes: Dolton Condition has been met

No: Elliott, Wahl, Soutar, Dloski Condition has not been met

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

Yes: Wahl, Soutar Condition has been met

No: Elliott, Dloski, Dolton Condition has not been met

Elliott moved Variance Request 3 be denied with a second by Wahl.

Yes: Dloski, Soutar, Dolton, Wahl, Elliott

passed unam

Deeren: Variance Request 3 is denied.

Soutar moved to **consider variance request 4 with a second by Wahl. **passed unam****

4. Requesting a variance from the required sixty (60) foot setback from the ordinary high water mark to twenty-one feet in order to relocate an 8 ft by 16 ft shed.

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.

Yes: Wahl, Soutar Condition has been met

No: Elliott, Dloski, Dolton Condition 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.

Yes: Soutar Condition has been met.

No: Elliott, Wahl, Dolton, Dloski Condition 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

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property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)

Yes: Soutar, Dolton Condition has been met

No: Elliott, Dolton, Dloski Condition 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.

Yes: Dolton, Soutar Condition has been met

No: Elliott, Wahl, Dloski Condition 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.

Yes: Dolton, Wahl, Soutar Condition has been met

No: Elliott, Dloski Condition has not been met

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

Yes: Wahl, Dolton, Soutar, Dloski Condition has been met

No: Elliott Condition has not been met

Dloski moved Variance Request 4 be denied with a second by Elliott.

Yes: Dloski Dolton, Wahl, Elliott

No: Soutar

passed

Deeren: Variance Request 4 is denied.

Elliott moved to **consider variance request 5 with a second by Dloski **passed unam****

5. Requesting a variance from the required fifteen (15) percent lot coverage to twenty-two point six-one (22.61) percentage in order to construct a 20 ft by 30 ft deck and a 4 ft x 20 foot walkway.

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.

Yes: Dolton, Soutar Condition has been met

No: Elliott, Dloski, Wahl Condition 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.

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition 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.)

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition has not been met

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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.

No: Elliott, Wahl, Dolton, Soutar, Dloski Condition 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.

No: Elliott, Wahl, Soutar, Dloski, Dolton Condition has not been met

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

Yes: Wahl, Dolton Condition has been met

No: Elliott, Dloski, Soutar Condition has not been met

Wahl moved that Variance Request 5 be denied with a second by Elliott.

Yes: Dloski, Soutar, Dolton, Wahl, Elliott **passed unam**

Deeren: Variance Request 5 is denied.

Deeren Request No. 899, Zoning R-1B is denied.

Soutar: why can't we offer them a lesser variance?

Meihn: this is not a best practice. The board can only approve or disapprove what was originally asked for. This request has been published in the Record Eagle and the neighbors notified.

While your ordinance currently would allow a lesser variance, I do not recommend using it.

8. Approval of Minutes from February 15, 2022 Regular Meeting

Dloski moved to approve the minutes with a second by Elliott. **passed unam**

9. Citizen Comments None

10. Board Comments Soutar: for item number 4, I thought we were voting on a more relaxed request.

11. Adjournment Wahl moved to adjourn the meeting with a second by Dloski. **passed unam**

Adjourned at 8:45 p.m.