

**PENINSULA TOWNSHIP  
REGULAR MEETING  
ZONING BOARD OF APPEALS MINUTES  
In person Meeting: 13235 Center Rd., Traverse City, MI 49686  
Virtual Meeting Via Zoom-Link Provided Below  
(If in person meeting is unable to be held):**

April 20, 2021

7:00 p.m.

Corrections made 5/20/21 by R. Noval

1. **Call to Order** Soutar called the meeting to order at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Soutar, Elliott, Dolton, Couture, Serocki, township attorney Meihn
4. **Approval of Agenda** Serocki moved to approve the agenda with a second by Dalton.  
Roll call vote Yes- Dolton, Elliott, Serocki, Soutar, Couture **PASSED UNAM**  
**Note:** Murazai from Land Information Access Associates (LIAA) conducted the virtual meeting. Members of the public could participate by raising their hand in zoom. Those calling in by phone could raise their hand by pressing \*9.
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None
7. **Old Business Tabled from March 16, 2021**  
Serocki moved to bring this tabled request back to the agenda with a second by Couture.  
Roll call vote Yes: Dolton, Elliott, Serocki, Soutar, Couture **PASSED UNAM**

**Deeren:** The correspondence intended for the board was missing from the March 16, 2021 meeting; this is why the request was tabled. That correspondence is now available to the board in the packet or packet addition.

**1. Request No. 890, R-1B**

**Applicant:** Jessica Bachmann-Perez, 910 Sheridan Rd., Traverse City, MI 49686

**Owner:** Jessica Bachmann-Perez, 910 Sheridan Rd., Traverse City, MI 49686

**Property:** 910 Sheridan Rd., Traverse City, MI 49686

1. Requesting a variance from the required thirty (30) foot rear setback to seven (7) feet for a 1620 square foot deck, a 214 square foot shed and 693 square feet of six (6) foot tall walled fence that has been constructed and placed without the proper permits.
2. Requesting a variance from the required fifteen (15) foot side yard setback to four (4) foot side yard setback on the westerly property line for a 1620 square foot deck, a 214 square foot shed and 693 square feet of six (6) foot tall walled fence that has been constructed and

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placed without the proper permits.

3. Requesting a variance from the required 25 percent of lot coverage to 43.89 percent for a 1620 square foot deck, a 214 square foot shed and 693 square feet of six (6) foot tall walled fence that has been constructed and placed without the proper permits.

Jessica Bachmann-Perez 910 Sheridan Rd

I want to thank the board for allowing us to have the opportunity to share the new information and show the new modifications we are proposing. These modifications appear in Exhibit 12 in the PowerPoint Mr. Olson is going to present.

Nick Perez 910 Sheridan Road

This is an engineer drawing of a 20,000 square foot lot, which is what the township ordinances are based on. This shows our lot is well within all of the required setbacks. This lot is a legally non-conforming small lot. The 3 neighbors that we share the lot lines with are all in favor of this deck and have provided letters of support. The shed would be removed. The fence will conform to 4 feet. The fence is not near the rear neighbor lot line and the neighbor has no objection to our plan. The videos presented showed the poor drainage and pooling water when it rains in the backyard, which is composed of clay. The water takes days to sink into the clay, making the backyard unusable to our family.

James Olson 420 E. Front Street

Olson gave a PowerPoint presentation during this portion of the meeting which showed the new variance request and dimensions. Slide 8 of the presentation explained the proposed compromise for this variance. The applicant has submitted a modified deck, shed, and screen/fence plan to exceed the standards for a variance by reducing the width and length of the deck, moving the shed to remain within the parameters of the deck, and reducing the screen/fence to 4 feet instead of 6 feet above the surface of the deck. The current deck length would be cut back approximately 9-10 feet to line up with the existing NW side of the garage/house and would then make the variance required only .5 feet. The side yard setbacks will equal 13.9 feet, 14.9 feet and approximately 20 feet to the NE corner with the Coughlin property. The shed, which now sits on top of the deck would be moved back within the footprint of the reduced size of the deck. These proposed changes reduce the lot coverage to 28.2%. This would then require only a 3.2% variance to meet the 25% lot coverage requirement. The applicant will pay all fine and fees that are due. Slide 11 presents Section 5.7.5 (3) of the Ordinance. Section 5.6 states "Where there are practical difficulties...the Board shall have the power in passing...upon appeals to vary or modify any of its rules, regulations or provision so that the spirit of the Ordinance shall be observed, public safety secured and substantial justice done." The spirit of the ordinance is to help people with these small nonconforming lots to become less nonconforming, which is the case here.

**Couture:** The next to last slide presented lists Ordinance 5.7.5 and should be 5.7.3.

**Olson:** Thank you for the correction.

**Dolton:** Do we have a new estimate of the square footage of the new proposed deck?

**Soutar:** The original estimate was a deck 1620 square feet and has been reduced down to 1140 square feet.

**Dolton:** if we were to agree to a lesser amount, what would be the square footage of the new proposed fence?

**Deeren:** The square footage of the fence goes against the lot percent coverage.

**Soutar:** The fence is on top of the deck so it is not added onto the lot coverage square footage right now. A 600 square fence would reduce the lot coverage down to 29%. This is a small lot.

**Dolton:** Christina, is the fence square footage relevant here?

**Deeren:** I have to deal with the proposal for the variance that was published and submitted to me. Yes, you can propose something lesser, but the items in the proposal before you would have to be voted down and new numbers for the modification could then be proposed. The fence cannot go on the deck and has to be 4 foot at grade.

**Soutar:** Have you considered putting a foot of topsoil and sand in the back yard to absorb some of the water?

**Olson:** Yes, we have considered this. The water would drain onto one of the neighbor's property. This is the way the property has drained for 50 years. Any action taken would have unpredictable results.

**Soutar:** I will now bring this to the public portion of the meeting. Is there anyone who wishes to speak in favor of the proposal? Hearing none, is there anyone who wishes to speak against the proposal? Hearing none, I will now bring this back to the board.

**Serocki:** What is the actual proposal we are to consider? Is it the new request for a different set of variances as presented tonight or the original request?

**Deeren:** We are looking at the published, original variance request.

**Serocki:** The proposed, original lot coverage is excessive. Section 7.5.6 states that a nonconforming lot cannot be made more nonconforming. I am against this request.

**Elliott:** I agree with Serocki. I cannot justify requesting the lot coverage as written.

**Soutar:** This is a small lot with a drainage issue. Cutting the side yard makes the setback more egregious. This large deck exceeds the side yard setback. A fence that is 37x20 would be 720 square feet and make the lot coverage more acceptable. The applicant could try using french drains in the back to mitigate the drainage problem. The neighbors are supportive.

**Couture:** I am amenable to a larger deck as the back yard is unusable most of the time.

**Dolton:** The lot is unusable without the deck. I am more concerned about the health risk than the size of the deck. The side yard setback would be no worse that it currently stands. I am not in favor of the original proposal.

**Couture:** Why are we using the original proposal tonight?

**Deeren:** You would need to turn the original request down as this is what was published in the paper and what was originally proposed. This is an existing structure built without a permit. you need to look at what is there now to approve the initial variance request.

**Meihn:** You would need to shut down this original proposal as written and then the board could consider a new and lesser variance. This is because this deck has been built without a permit.

This existing structure is not legal and cannot be approved. Once this is turned down the board can propose a lesser variance request. Each one of the original variance requests are voted on separately.

**Couture moved to deny the variance 1 request as written with a second by Serocki.**

1. Requesting a variance from the required thirty (30) foot rear setback to seven (7) feet for a 1620 square foot deck, a 214 square foot shed and 693 square feet of six (6) foot tall walled fence that has been constructed and placed without the proper permits.

**Soutar:** The applicant must meet all of 6 Basic Conditions for each variance request. Have the 6 conditions for Request 1 been met?

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.

No-Couture, Dolton, Serocki, Soutar

Yes- Elliott

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

No- Elliott, Dolton, Soutar, Couture, Serocki

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, Dolton, Soutar, Couture, Serocki

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, Dolton, Soutar, Serocki

Yes-Couture

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, Dolton, Couture, Serocki

Yes-Soutar

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.

No-Soutar, Dolton

Yes-Couture, Serocki, Elliott

**Deeren:** Condition 6 passes, but all the other conditions were not met.

**Couture moved to deny Request 890-R-1B Item 1 with a second by Serocki.**

**Roll call vote- Yes- Elliott, Dolton, Soutar, Couture, Serocki**

**Variance Request Number 1 is denied.**

**Dolton moved to deny variance request Number 2 as written with a second by Elliott.**

**Soutar:** The applicant must meet all 6 of the following Basic Conditions for each variance request. Have the conditions for Request 2 been met?

2. Requesting a variance from the required fifteen (15) foot side yard setback to four (4) foot side yard setback on the westerly property line for a 1620 square foot deck, a 214 square foot shed and 693 square feet of six (6) foot tall walled fence that has been constructed & placed without the proper permits.

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.

No- Soutar, Dolton, Couture, Serocki

Yes-Elliott

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

No- Soutar, Dolton, Couture, Elliott, Serocki

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- Soutar, Dolton, Couture, Elliott, Serocki

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- Soutar, Dolton, Elliott, Serocki

Yes-Couture

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- Soutar, Dolton, Couture, Elliott, Serocki

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.

No- Dolton, Soutar

Yes-Elliott, Couture, Serocki

**Deeren:** Condition 6 passes, but the other 5 conditions were not met.

**Dolton moved to deny Request 890-R-1B Item 2 with a second by Elliott.**

**Roll call vote- Yes- Elliott, Dolton, Soutar, Couture, Serocki**

**Variance Request Number 2 is denied.**

**Couture moved to deny variance request Number 3 as written with a second by Serocki.**

**Soutar:** The applicant must meet 6 of the following Basic Conditions for each variance request. Have the conditions for Request 3 been met?

3. Requesting a variance from the required 25 percent of lot coverage to 43.89 percent for a 1620 square foot deck, a 214 square foot shed and 693 square feet of six (6) foot tall walled fence that has been constructed & placed without the proper permits.

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.

No- Dolton, Couture, Serocki

Yes-Soutar, Elliott

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

No- Couture, Serocki, Dolton, Soutar, Elliott

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- Soutar, Dolton, Couture, Elliott, Serocki

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- Dolton, Elliott, Serocki

Yes-Couture, Soutar

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- Soutar, Dolton, Couture, Elliott, Serocki

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.

No- Dolton, Soutar

Yes-Elliott, Serocki, Couture

**Deeren:** Condition 6 passes, but the other 5 conditions were not met.

**Dolton** moved to deny Request 890-R-1B Item 3 with a second by **Couture**.

**Roll call vote- Yes- Elliott, Dolton, Soutar, Couture, Serocki**

**Variance Request Number 3 is denied.**

**Soutar:** Are we now going to submit to a lesser and more relaxed request than the original application?

The board now discusses the various issues to arrive at a lesser and relaxed variance request.

**Request 1. Dolton** moved for variance as a **thirteen (13)** a rear setback from the required **thirty (30)** foot rear setback to construct a **1140** square foot deck and a **214** square foot shed. **Seconded by Couture.**

**Soutar:** The applicant must meet all 6 of the following Basic Conditions for this variance request. Have the conditions for Item 1 been met?

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-Couture, Dolton, Elliott, Soutar, Serocki

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

Yes-Couture, Dolton, Elliott, Soutar, Serocki

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.)

Yes-Couture, Dolton, Soutar, Elliott

No-Serocki

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-Couture, Dolton, Soutar

No-Serocki, Elliott

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-Couture, Dolton, Soutar

No-Serocki, Elliott

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-Couture, Serocki, Elliott, Dolton, Soutar

**Deeren:** All of the 6 conditions were met. Variance Item 1 passes.

**Couture moved to approve Request 890-R-1B Variance 1 with a second by Serocki.**

**Roll call vote- Yes- Elliott, Dolton, Soutar, Couture, Serocki**

**Variance Request 890-R-1B Variance 1 passed.**

**Request 2. Couture moved that a variance from the required fifteen (15) foot side yard setback to thirteen (13) foot side yard setback on northwest property line for a 1140 square foot deck and a 214 square foot shed. Serocki seconds.**

**Soutar:** The applicant must meet all 6 of the following Basic Conditions for this variance request.

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-Couture, Dolton, Elliott, Soutar, Serocki

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

Yes-Couture, Dolton, Elliott, Soutar, Serocki

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.

Yes-Couture, Dolton, Soutar, Elliot

No-Serocki

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-Couture, Dolton, Soutar, Serocki, Elliott

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-Couture, Dolton, Soutar, Serocki

No- Elliott

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-Couture, Serocki, Elliott, Dolton, Soutar

**Deeren:** All of the 6 conditions were met. Variance 2 passes.

**Couture moved to approve Request 890-R-1B Variance 2 with a second by Serocki.**

**Roll call vote- Yes- Elliott, Dolton, Soutar, Couture, Serocki**

**Request 890-R-1B Variance 2 passed.**

**Dolton moved for Variance 3 from 25% lot coverage to a 31.89% lot coverage with a second by Couture.**

**Soutar:** The applicant must meet all 6 of the following Basic Conditions for this variance request.

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-Couture, Dolton, Elliot, Soutar

No-Serocki

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

Yes-Couture, Dolton, Soutar

No-Serocki, Elliot

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



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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.

Yes-Couture, Dolton, Soutar  
No-Serocki, Elliot

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-Couture, Dolton, Soutar, Serocki  
No-Elliott

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-Couture, Dolton, Soutar, Serocki  
No- Elliott

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-Couture, Serocki, Elliott, Dolton, Soutar

**Deeren:** All of the 6 conditions were met. Variance 3 passes.

**Dolton moved for Variance 3 from 25% lot coverage to a 31.89% lot coverage with a second by Couture.**

**Roll call vote- Yes- Elliott, Dolton, Soutar, Couture  
No-Serocki**

**Request 890-R-1B Variance 3 passed.**

**Deeren:** The applicant must now come and get a land use permit and pay the fine.

## **8. New Business:**

1. Request No. 891, Zoning R-1C

**Applicant:** Michael & Dania Cannon & Carol Sibia, 6410 Peninsula Dr., Traverse City, MI 49686

**Owner:** Michael & Dania Cannon & Carol Sibia, 6410 Peninsula Dr., Traverse City, MI 49686

**Property Address:** 6410 Peninsula Drive, Traverse City, MI 49686

1. Requesting a variance from the required fifteen (15) foot side yard setback on the northerly property line to a zero (0) side yard setback for a walled fence over six feet in height that has been constructed and placed without the proper permits.

**Parcel Code # 28-11-485-001-00**

Michael Cannon 6410 Peninsula Dr.

We put this fence up because the head lights from the cars turning into Franklin Woods makes the room where the light shines in unusable at night. I did not know I needed a permit to put up the fence.

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**Deeren:** There was not a survey done, so it is difficult to tell where the actual property line is. I did not see the property posts as stated by the applicant on my site visit.

**Dolton:** As this is a solid fence, would this make it deemed a structure?

**Deeren:** Yes.

**Couture:** There is another fence that blocks the utility box and is right on your property line.

**Deeren:** That is correct and that fence would need to be removed.

**Soutar:** Did you try planting evergreen trees to block the light?

**Cannon:** Yes, and I could not dig the holes deep enough to get the tree root ball planted.

**Soutar:** I will now this up to the public portion of the meeting. Is there anyone who wishes to speak in favor of the proposal? Hearing none, is there anyone who wishes to speak against the proposal? Hearing none, I will now bring this back to the board.

**Deeren:** Just to be clear a fence needs to be 4 foot above grade and be 50% open. What we are dealing with here is a structure.

**Elliott:** This is asking for a large variance and I am not inclined to vote yes. A variance this large for a fence to block the light does not seem necessary to me.

**Soutar:** The salient fact is that the fence is not up against another person's property. There will never be another structure built behind this fence.

**Couture:** The neighboring association is in favor of the fence. I am inclined to support the zero (0) foot side yard setback.

**Dolton:** Next door to this property is a parking lot and light can shine in any time day or night. I can understand the need for privacy. I am also in favor of approving the requested variance as stated.

**Serocki:** I just want to make sure that the fence blocking the utility box is removed. This section might even be in the road right-of-way.

Soutar- The variance request is not asking about that fence.

**Dolton moved to approve a variance from the required fifteen (15) foot side yard setback on the northerly property line to a zero (0) side yard setback for a walled fence over six feet in height that has been constructed and placed without the proper permits with a second by Couture.**

**Soutar:** Section 5.7.3 (1) BASIC CONDITIONS: The applicant must meet all 6 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-Soutar, Couture, Dolton, Serocki

No- Elliott

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

Yes-Soutar, Couture, Dolton

No- Elliott, Serocki

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.

Yes- Soutar Couture, Dolton, Serocki

No- Elliott

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- Soutar, Couture, Dolton

No- Serocki, Elliott

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- Elliott, Soutar, Couture, Dolton, Serocki

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-Serocki, Soutar, Couture, Dolton

No- Elliott

**Dolton moved to approve a variance from the required fifteen (15) foot side yard setback on the northerly property line to a zero (0) side yard setback for a walled fence over six feet in height that has been constructed and placed without the proper permits with a second by Couture.**

**Roll call vote- Yes- Serocki, Dolton, Couture, Soutar**

**No-Elliott**

**Deeren:** The variance passed. Cannon needs to come into the zoning office and obtain a land use permit.

**3. Request No. 892, Zoning R-1C**

**Applicant:** CF Campbell, JML Design Group Ltd., 225 E. 16<sup>th</sup> St., Ste. B, Traverse City, MI 49684

**Owner:** ACMEPEN One LLC, 5168 US 31 N. Mailbox 8, Williamsburg, MI 49690

**Property Address:** 10602 Bluff Rd., Traverse City, MI 49686

1. Requesting a variance from the required twenty-five (25) foot front setback to nineteen (19) feet from the road right-of-way in order to construct a 1290 square foot structure on an existing legal non-conforming lot of record.

2. Requesting a variance from the required fifteen (15) foot side yard setback to a zero (0) foot side yard setback on the southerly property line in order to construct a 1290 square foot structure on an existing legal non-conforming lot of record.

3. Requesting a variance from the required sixty (60) foot setback from the ordinary high water line and for the entire 1290 square foot proposed structure to be constructed within the ordinary high water line setback on an existing legal non-conforming lot of record.
4. Requesting a variance from the required twenty-five (25) percent lot coverage to thirty-one (31) percent lot coverage in order to construct a 1290 square foot structure on an existing legal non-conforming lot of record.
5. Requesting a variance under Section 7.5.6 Moving or Replacing a Non-conforming structure items 1-5.
6. Requesting a variance under Section 7.5 Non-Conforming Uses and Structures (REVISED BY AMENDMENT 171B); Non-Conforming Structures.

**Parcel Code # 28-11-625-009-50**

Presentation by CF Campbell, JML Design Group Ltd., 225 E. 16<sup>th</sup> St., Ste. B Traverse City

**Campbell:** The house is located at 10602 Bluff Road. The house is 1290 square feet and 1 story high. The house is on the east side of Bluff Road. In June, 2020 due to rising water in the east side of the bay and westerly wind, 10-12 inches water came into the house. As the water receded sand and gravel were deposited inside the house. The west side slab and structure was damaged; this leads me to believe the foundation is damaged as well. The ordinance clearly states we can rebuild the house within the exact footprint of the house. The ordinance allows an increase if there are issues of safety. We have several safety issues. The entire property was in 1957 and today is in the ordinary high water mark. The four existing parking spaces are in the road right-of-way. The property is protected by a concrete inter-locking wall that is in the road right-of-way. The issue is that if the house is built where it stands today, with the cyclical level of the lake, we will be back here asking for another variance if the same conditions were to happen again. As a result of that, my professional opinion is to build 3 concrete walls that would then support a concrete plane floor that would enter off Bluff Road. This would have 2 parking spaces and 2 spaces in the garage. If I increase the footings to raise the house up, the zoning ordinance allows me to move this up to Bluff Road, which is the frontage road of the structure. Increasing the height of the building makes the house more nonconforming. I met with the road commission to look at the problem of the 4 residences on the hillside above the property and water runoff comes down across Bluff Road and onto this property and the Snow and Glinke property. The road commission did not have a viable solution for this. When I told them that I was meeting with the ZBA, one of the solutions proposed is to fill dirt alongside of the retaining wall that currently exists. Then we could fill dirt against the existing 3 concrete walls to build a catch basin that would move the water into the lake.

**Deeren:** We could not allow water to be released into the bay as this would be a violation of the storm water ordinance.

**Meihn:** If you drain water into the bay, you are in violation of at least 7 federal felonies if this is done intentionally.

**Deeren:** The entire property in 1957 was in the ordinary high water mark and still is located within the ordinary high water setback. You also have a problem with the size of the lot

coverage.

**Campbell:** The zoning ordinance states we can rebuild the house in the existing footprint.

**Soutar:** You are telling us that you cannot do that. It appears the redone seawall did not solve the problem of water and sediment into the house. There are bigger problems here. The lot is unbuildable and in addition the issue of moving water off the property and putting water into the lake will not be allowed. The 50 square feet of nonconforming parking in the road right-of-way is not the biggest problem for this case.

**Campbell:** If we could solve the water problem and the height of the building, might this be approved?

**Couture:** Can a person tear down a nonconforming structure and build another one in the exact same location without coming before the ZBA?

**Deeren:** Even if you were to tear down the existing building and replace it with a new structure on that exact footprint, you would need to come back before this board. I could not just permit that structure.

**Meihn:** We do not need to do something tonight. I think we should table this request. I will meet with Campbell and work to find a way forward.

**Campbell:** That would be exceedingly helpful.

**Dolton:** I think that even if the water issue is solved, there are many more variance issues to address.

**Campbell:** I would like to come back with a more refined solution to many of these concerns.

**Couture moved to table this request to a date certain of May 18, 2021 with a second by Serocki.**

**Roll call vote-yes Soutar, Serocki, Dolton, Couture, Elliott**

**PASSED UNAM**

#### **9. Approval of Minutes from March 20, 2021 Regular Meeting**

**Couture moved the minutes from March 20, 2021 be approved with a second by Serocki.**

**Roll call- Yes- Soutar, Dolton, Serocki, Couture, Elliott**

**PASSED UNAM**

#### **10. Citizen Comments**

John Snow 10605 Bluff Road

I live at 10605 Bluff Road. This is directly across the road from the ACMEPEN property at 10602 Bluff Road. We have lived here since 1997. It is my understanding that ACMEPEN started the excavation project without permits. We did not have an erosion problem until ACMEPEN did the unauthorized excavation. Since then there has been considerable erosion on our property that was not naturally occurring. I cannot believe they were allowed to do the excavation. Most of the water from their property is draining into the lake. They graded it so badly that the end is coming onto my property. On March 3, 2021 ACMEPEN received a notice of violation from the health department for soil erosion flowing from their property onto my property. Regarding the wave action ACMEPEN did a sea wall where the lip extended 9 inches and has stopped the sea spray. ACMEPEN now seeks to continue to renovate this property in violation of current

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nonconforming structure regulations. There is a lot of fantasy going on. You cannot have a drain basin flowing into the lake and yet they have already created one. They are blaming us for the erosion that never occurred until they did the excavation work. ACMEPEN did not pull permits and do not correct violations. They are very difficult people to work with.

**11. Board Comments Serocki:** I have a question regarding procedures in the meeting. The applicant presentation has happened and the public comment portion has ended. There are questions by the board to the applicant and a motion is made. Then we go through the 6 conditions and then another motion is made. Do we need to go through and make the second motion?

**Meihn:** A member can make a motion to approve or disapprove an issue. If there is no second, the motion fails. A member can make a motion to approve all of the requests at once. If that fails, then a new motion needs to be made. It is a cumbersome process. A motion can be made upon how a member feels.

**12. Adjournment** Dolton moved to adjourn the meeting with a second by Couture.  
Meeting adjourned at 9:47 p.m.