

PENINSULA TOWNSHIP
13235 Center Road, Traverse City MI 49686
Ph: 231.223.7322 Fax: 231.223.7117
www.peninsulatownship.com

**PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS MINUTES**

April 23, 2024
7:00 p.m.

1. **Call to Order** to order by Dolton
2. **Pledge**
3. **Roll Call** Cowan, Dloski, Wahl, Dolton, Dunn, Cram-director of planning and zoning.
4. **Approval of Agenda** **Dunn moved to approve the agenda with a second by Cowan.**
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. 917, Zoning = R-1B – Coastal Zone

Owner: Richard Wiener Trust, 1847 Wilson Avenue, Saginaw, MI 48638

Applicant: Raquel and Sean McGovern, 1245 Lake Shore Drive, Boyne City, MI 49712

Property Address: 11692 Bluff Road, Traverse City, MI 49686

1. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a second story addition above an existing detached garage 5 feet from the side property line, where 15 feet is required.

Parcel Code # 28-11-003-015-00

Dolton opens the public meeting on request number 917. Cram read the variance request out loud and reported there was a packet addition dated April 23, 2024, which included additional correspondence from both the applicant and a neighbor. Cram presented photos of the existing garage. Township setbacks are measured from property line to edge of eave and if this variance is approved, there would be no eave on the north side of the building to meet setbacks.

Dloski: if the owner wanted to just repair the roof and make it safe, would they need a variance?

Cram: no.

Dloski: is a variance needed because they want to expand that area?

Cram: yes, because they are going up, the addition and the additional floor space does not meet required side setback.

Wahl: they would need a variance if they modify or expand the garage?

Cram: zoning ordinance 7.5.4 discusses the repair and or alteration of a non-conforming structure. If they replaced or repaired the existing flat roof, they would not need a variance. This originally came in as a land use permit and staff determined a variance was required based on what is being proposed.

Dolton: this request is subject to zoning ordinance 7.5.5- additions to a non-conforming

Peninsula Township
Zoning Board of Appeals
April 24, 2024 7:00 p.m.
Lola Jackson Recording Secretary

structure. However, that section does not provide any helpful guidance here as 7.5.5 simply states the request will be approved if the addition is not located in any required yard or ordinary high water mark setback. This means we fall back to the standard requirements under 5.7.3, which are the 6 basic conditions. All 6 of these conditions must be met. If anyone of these fails, the variance is denied.

Richard Wiener P0 Box 250 Williamston, Mi. 48895

My wife and I are the owners of the property. The technical applicant is Sean McGovern, the actual applicant and contractor on the project. I would like to explain what we are trying to do here and what we are not trying to do here. We bought the house in 1985 from my father-in-law, who lived in the house from 1976 to approximately 1985. We have done substantial, internal improvements to the house with the necessary permits. We have not done anything that expands the girth of the house abutting the neighboring Madion house. We have not changed the placement of the tennis court or garage spatially in any way. There are some things that have changed over the past 39 years. One is the trees have grown bigger and this presents challenges. One of those challenges is debris from the trees falls on the roof. Water then collects around this debris and freezes and expands in the winter. We have to spend hundreds and in some cases thousands of dollars each year to repair the roof. We have replaced the roof at least once, perhaps more. A flat roof just doesn't work when there are trees. We have cut back some of the foliage around us and some of this foliage is from Dr. Madion's property and falls on our roof as well. The second problem is we have accumulated plenty of items over the last 40 years. We are unable to use the garage for storage due to the roof. We do not have a boat. We do have some water toys and no place to put them. We have a dock that needs to be stored. We have sold our business and have items that need to be stored as well. We have downsized our permanent residence and have artifacts from there we would like to store. One of the proposed solutions to this garage roof problem was to build up and install a peaked roof with a couple of gables. We did not want it to look like a storage bin or even just like a garage. We wanted to do something nice. This would be two storied, gabled, with glass to let sunlight in and would give us adequate storage. We could store a car and the dock in the winter. I discussed this with Sean, who for full disclosure is related to me by marriage and is also a licensed contractor. We have been questioned about our intentions, especially from the neighbor to the north. One of the letters in the packet refers to our intentions as highly questionable. Frankly, I was quite offended by that. I have not ever lied to the Madions and I am not starting now. All we want to do is build something aesthetically pleasing, which will provide value and utility to us. This structure is not visible to the neighbor to the south. The garage setback is easily 100 feet from Dr. Madion's house, not from his property line. We have had the lot line staked off. In the staff report, there was one stake that was apparently moved to be closer. This would not be in my best interest and I can assure you, I did not move the stake. We are not intruding by air space that 5 foot line. We do not intend to, we do not want to, and we are not going to. We are not going to use it for residential purposes in any way. We do not want to build a bedroom. We do not rent our house out to anybody. There have been 2 occasions I can recall when we rented out our house. Once was to someone whose house had burned down and the other was when someone was doing construction on their home. The structure will not have plumbing, heat, or a bathroom. It will not

Peninsula Township
Zoning Board of Appeals
April 24, 2024 7:00 p.m.
Lola Jackson Recording Secretary

be used as an office for any purpose. I ask that you look on this request favorably.

Dolton: it does not look like the tennis court has heavy use and I was wondering if you considered building the structure where the court sits.

Wiener: no, and I will give you 2 reasons for this. One is the court is used heavily in the summer for playing pickleball. The second reason is the court was built 47 years ago and there is a disagreement as to what the property rights are with respect to that tennis court, which is apparently based on the staking. One small portion of the court intrudes 3-4 inches onto Dr. Madion's property.

Dolton: my question more addresses the fact that there is room within allowable setbacks for a building.

Wiener: we use the tennis court.

Dolton: if you are only going to use it for storage, why is there a balcony in the plan?

Wiener: because there are 4 balconies on the house, this would make it architecturally consistent. We do not have grandchildren yet, but we aspire to. People come over who have kids and they love to sit on the balconies of the house.

Wahl: the garage built in 1955 predates the zoning ordinance. Has any other work been done on the garage since then?

Wiener: only the roof to my knowledge.

Wahl: so the footprint will not change, you are just changing the roof?

Cram: I believe the footprint does change.

Sean McGovern answered from the audience.

McGovern: yes, the footprint does change. There are 2 footings that get cored down to support the very front of the garage and will also support the proposed balcony.

Wahl: are the footings within setbacks of the front?

Cram: they are in the center of the property. If you look at the way it is oriented I just noticed...

Wiener: we deliberately designed it that way so people wouldn't be able to look out onto neighbors' properties.

Wahl: so you are looking at the south end of the property, not the north end?

McGovern: correct.

Wahl: is the balcony going on the south end as well?

McGovern: yes.

Cram: the elevations are included after the site plan. The site plan shows the footprint of the garage as being 24 by 32 feet and then it shows on the floor plan it as being 24 by 37 feet.

McGovern: (alludes to picture displayed on monitor) if you look at that picture, that concrete on the front of the garage extends out by 5 feet, so that makes up that 5 foot difference.

Cowan: so you are extending the building 5 feet to the south?

Cram: if you look in your packet at the elevations, you can see how far out the eave over the garage door goes and that is consistent with this, the roof pitch is changing. The footprint of the garage stays the same at the 32 feet, but the total length of the roof is 37 feet. The site plan only shows the footprint of the garage, but not the roof. They are not going to have eaves on the north side of the building, so they are not encroaching any further into the setback from the north

property line.

Sean McGovern comes up to the podium. **1245 Lakeshore Boyne City**

McGovern: the way it is proposed right now is the very back of the existing building will go straight up and then when we design or build that gable end, which will be wrapped in a matter to deflect and defend from water so it really won't need a soffit. We will not encroach any further back onto the property line.

Cowan: I am here sort of scratching my head about putting in a covered porch with a 5 foot protected overhang. At some point, assuming we might approve ancillary dwelling units here, you would probably want to put a bathroom out there...

McGovern: absolutely not.

Cowan: would you be willing to sign an affidavit that you won't use it in any other manner.

McGovern: absolutely. Just to touch on that point on the balcony, the original plan we had put together with the architect had a pitched roof that just looked ugly. We can utilize a soffit. We can firm it up a bit and then you can go out there and you have a nice balcony to hand over things like a stand-up paddle board. That way you don't have to go through the garage if there is a car in there. The main point is the garage is failing and if something doesn't happen, the garage will fail catastrophically. For a number of years, we have tried to repair things, but debris just keeps falling on the roof. Obviously, a 12x12 pitched roof is a better idea. Right now the garage is filled with water toys and other items. This redesign would allow them to pull their cars in there and then hand stuff up to the balcony, such as a stand-up paddle board or light water things. Rick's (Wiener) wife likes the design as it is 90% matching the design of the house. The additional functionality is a plus.

Dolton: is there anyone who wishes to speak in favor of this application, seeing none, is there anyone wishing to speak against this application?

Maureen Madion 6162 Peninsula Drive Traverse City 49686

I am here representing the Madions, which own the property to the north of the Wiener's property. While this tennis court is not at issue or an issue for the variance today, it is an issue because the existence of the tennis court, which is non-conforming. This was built after the zoning ordinance was placed into effect. It is relevant to the extent that approving a variance on a piece of property where a 5,000 foot structure and a 12 foot fence are non-conforming and illegal and benefiting an applicant is unfair and unjust. One of the basic conditions required for the variance is it not result in injustice. In this case, if you were to allow a variance with the tennis court present, this would be an injustice. The tennis court was built after 1972. The Madions moved into that property and built their house in 1971. The tennis court did not exist at that time. Dr. Carl Madion would attest to that fact. Mr. Wiener did just say he could only attest to the last 39 years and not back to the time the tennis court was built. There is no indication in the records the court pre-existed the zoning code. The violation and the encroachment and the setback violation must have been known to the Wieners since 2019. This has been known by the township since 2020. To the extent no further investigation took place at the township was basically due to the fact that my father could not follow up due to his health. I do not know if the matter was dropped or lost in the paperwork. None the less, it was brought up in a timely way and never addressed. Now you have an applicant seeking a variance to build a greater structure

for a non-conforming use, when this violation exists and cannot be ignored under these circumstances. I would posit under these circumstances; the basic conditions are not present and granting of this request would be inappropriate. We are asking this violation be cured in advance of the proposed variance such that all of the basic conditions would be present. The Wieners are entitled to change and improve that structure. They are not entitled to make it bigger under any circumstances or to use it for any further use. Indeed, the ordinance does address changes in use and what can be done to a structure if the use has changed. While I am not suggesting Mr. Wiener is not telling the truth, but as we all know the design for this structure and the added, covered balcony and a loft space above it could lead one to believe it won't just be used for storage only. We would ask this board, to the extent a variance is approved, that the tennis court was removed as a condition of approval. We request the board use its discretion in adding some conditions. One is an affidavit that the additional space would not be used for anything but storage. The space would not be used for any living dwelling or sleeping space. The Madions would posit a single story, even if it was an elevated story, but without a full second story would give the Wieners enough space. They can make it look nice; it doesn't need to be a 2 story height building so close to the property line. The Madions concede the 5 foot setback. I was not aware the stake was out of place. The Wieners concede to the survey and that the tennis court does encroach and is not within the setback. The only thing they do not concede is the date the court was built. My father can attest to the date the court was built. The Wieners are entitled to what the variance would allow, but it would be unjust to allow an illegal structure to be on the property. The Wieners did pay for 50% of the survey. The Wieners have known about this since 2019 and the township has known about it since 2020. If the board approves this variance, injustice would result, which takes away a basic condition that is required. It is unjust to the Madions to have a structure so close to the property line. It is also unjust to other residents of this township, who voluntarily comply to cure non-conforming, illegal structures on their property or those who are made to by this board. Unless a portion of the tennis court is removed to comply with the setback requirements and the lot coverage requirements are met, injustice is occurring.

Mr. Wiener requests to make additional comments to the board and Dolton approved.

Wiener: the structure to which Ms. Madion refers is a fence. It is a 10 foot fence, which can easily be cured by removal of the fence. While that does not solve the dispute, it would eliminate the question of whether or not this is a structure in violation. I do not know if this is a violation. If this is a structure, this is an easily solvable problem. No fence, no structure.

Cram: the tennis court is not considered to be a structure and does not need to meet the required setbacks. A fence over 4 feet in height is considered a structure and is required to meet building setbacks. A fence 4 feet and under can be placed on the property line with consent from both property owners. Otherwise, the fence would need to be 3 feet from the property line.

Wahl: does the fence or tennis court connect to the garage in any way?

Cram: no. This application has brought up the violation of a portion of the fence. Dave Sanger, the township enforcement officer, and myself will be working with Mr. Wiener to cure the fence issue.

Dloski: if the applicant would decide to remove this garage and move it 10 feet to the south, this would respect the side yard setbacks, then they could build what they want to build?

Cram: yes. If they removed the existing structure and moved it to the south, they would meet the 15 foot side yard setback measured from property line to edge of eave, they would not need a variance. The existing garage is 5 feet from the property line. They would need to move the entire structure to meet the 15 foot setback. There is value in the existing structure with the walls and foundation.

McGovern: if the structure was replaced in that area, there would be no room to be able to drive into the garage as it is right over the septic field and a tree.

Wiener: the septic field is not flat; we had to install a large mound.

Dolton closed the public portion of the meeting and moved the discussion back to the board.

Dloski: if they were to repair the roof on the existing garage and make it safe, they would not need a variance. You do not need to build a big second story on top of the garage.

Dunn: could you move the tennis court closer to the street?

Dolton: you could replace the tennis court with a regular sized pickleball court, which is smaller than a tennis court.

Dloski: the tennis court is not the issue here. It is the garage at issue here.

Cowan: I understand what they want to do is make the garage substantially larger, so they can have more storage.

Dloski: the issue here is what they want to do as compared to our ordinance.

Wahl: what they want to do is to change a legal non-conforming structure and increase the non-conformity in a different manner.

Dolton: prior to amendment 190, there were several standards for expanding non-conformity. With amendment 190 all of those standards went away, and the only statement was simply made that obviated the need to go to the zoning administrator or zoning board of appeals implying that Cram shall issue a land use permit for an addition to a non-conforming structure providing all of the 6 conditions are met. There is general guidance that the township on the whole wishes to minimize non-conformity. I understand the desire to make something nice and architecturally pleasing. However, this is more than what is necessary to improve the roof. If you wanted to provide some additional storage, if you have a pitched roof with an attic level area under the pitched roof, you would have more storage space. This is not living space or room for an office. A person could probably not even be able to stand. I would find this design acceptable within the standards of the ordinance.

Wahl: when you are going up into the airspace, it gets a little trickier. We are not talking about increasing non-conformity into a setback; we are talking about literally using airspace.

Dolton: so the risk there is an intensity of use. Making a storage space above the garage would result in an increase in intensity of use. Down the road, the proposed plan could easily become an office.

Wahl: that is speculation and we do not want to go against what the applicants are saying.

Cram: a signed use affidavit would be helpful to address any future use of the property beyond storage. The affidavit would run with the deed.

Dolton: I am not sure one could keep track of a use affidavit 10, 20, 30 years down the road.

Dloski: one would need to know to look for it on the title.

Cram: we do not require a title search for a land use permit.

Dloski: I understand, but someone who is buying the property will be put on notice, that is the point. We need to ask ourselves what is unique about this property that requires them to build this improvement and there is nothing, they just want it bigger.

Dolton: I am getting the sense we have a diverse set of opinions here. I have said, a variance requires meeting all of the 6 basic conditions and a majority of the board has to vote in the affirmative in order for any one of the conditions to be met. I would like to throw out one option, which is up to the applicant to decide. As you can tell, it feels like something of a split board and we are happy to move forward with this specific application. However, I am willing to offer the opportunity to table this particular application to next month, if you were willing to bring plans that are much more modest reflecting an amended roof line with some storage in an attic area under the roof line, not a living space, and not a balcony. I think your odds of getting that approved are higher. That is about as much as I can say about that; it is an option.

Wiener and McGovern discuss the option.

McGovern: I know the balcony is an issue for the board. We would totally agree to eliminate the 2 dormers on each side. We would like to keep the balcony as you are going to be limited by the internal stairway up there. If his daughter wants to take a stand up paddle board upstairs, it is not going to be super conducive to go up and around the stairs. With the balcony, we could put a slider and not make it so elaborate. The dormers are aesthetic and just for decoration and to allow light up there.

Wiener: what would be the date of the next meeting?

Cram: May 21, 2024.

Dolton: I want to be clear I am in no position to make representations of how the board will vote and while I am chair, my opinion is no more significant than any other member on this board.

Wiener: I appreciate your candor on that point. No warranties expressed there except as otherwise, etc.

McGovern: we will come back next month with a more modest plan.

Dolton: please read the 6 conditions and you need to consider the points made by the woman who spoke in opposition.

Dunn moved to table this application until May 21, 2024 with a second by Wahl.

Passed Unan

8. Approval of Minutes from the March 19, 2024, Meeting

Wes Cowan's name is misspelled as Cowen. **Mike Dunn moved to approve the minutes as amended with a second by Wahl.** Dloski moved to abstain.

Dolton: that makes 4 yes's and one abstention.

Approved by Consensus

9. Citizen Comments None

10. Board Comments This is the only case for the May 21, 2024, meeting.

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

Approved by Consensus

Peninsula Township
Zoning Board of Appeals
April 24, 2024 7:00 p.m.
Lola Jackson Recording Secretary

Meeting adjourned at 8:10 p.m.