

**Packet Addition
April 23, 2024,
Zoning Board of Appeals Regular Meeting**

Jennifer Cram

From: rmcgovern@absolutecont.com
Sent: Monday, April 15, 2024 6:26 PM
To: Jennifer Cram; Planning & Zoning Administrator
Cc: 'Sean McGovern'; 'Raj Wiener'; 'Richard Wiener'
Subject: RE: Weiner revised plans
Attachments: Wiener string line.jpg

Jenn,

Sean returned to the property and ensured that the stakes from the survey company, Gourdie-Fraser, Inc., are still in place. Sean ran a string line along the stakes and re-measured the distance. The NE corner of the garage is 5' 5-1/2" and the NW corner of the garage is 5' 10" from the Madion property line. I am attaching a picture which shows the string line running in a straight line along the survey stakes. In this picture, you can see that someone, presumably from the Madion family, took one stake and moved it closer toward the garage (to the left of the string line), so it is not along the straight line with the other stakes. The Madion family is then using this single stake, which was arbitrarily placed, as their measuring point and then claiming that the garage is less than 5' from their property line.

Do you need another drawing showing the precise measurements or is it sufficient to show that the garage is no closer than 5' at any point?

Thank you.

Raquel McGovern
Absolute Enterprises II LLC
Phone 989-737-3276

From: Jennifer Cram <planner@peninsulatownship.com>
Sent: Tuesday, April 9, 2024 8:28 AM
To: rmcgovern@absolutecont.com; Planning & Zoning Administrator <zoning@peninsulatownship.com>
Cc: 'Sean McGovern' <seanmcg@charter.net>
Subject: RE: Weiner revised plans

Received, thank you.

Jenn Cram
Peninsula Township Director of Planning and Zoning
13235 Center Road
Traverse City MI 49686
phone - 231-223-7314
fax - 231-223-7117
[*planner@peninsulatownship.com*](mailto:planner@peninsulatownship.com)

Office Hours: Mondays 7:30 am to 6:30 pm, Tuesdays – Thursdays 7:30 am to 5 pm and closed Friday – Sunday and Holidays.



Susan Piehl

From: Maureen Madion <maureenmadion@gmail.com>
Sent: Wednesday, April 17, 2024 10:38 AM
To: Jennifer Cram
Cc: Susan Piehl; Carl & Diane Madion
Subject: Madion Objection to Weiner/McGovern Variance Request
Attachments: MadionVarianceObjection.pdf; C08DF6E7-B6B7-4A97-B5FA-CB519D3F211C_1_201_a.heic; B2FD7B3D-11BA-474F-A07F-0BD648547610_1_201_a.heic; 2363A13D-C8B0-4FF1-B8BE-8DDDC17FAC17_1_201_a.heic

Hello Jennifer.

Thank you for the opportunity to respond to Variance No. 917 brought by the McGoverns on behalf of the Weiners for parcel code #28-11-003-015-00. I have attached the Madions' objection (with the attached images of Township Email Correspondence) for inclusion in the Zoning Board of Appeals Packet for the upcoming hearing. Please share it with the Board as soon as you are able. I will be representing my parents at the Board hearing on April 23.

If you have questions, please let me know.

All the best,
Maureen Madion
231.645.0135

OBJECTION OF CARL AND DIANE MADION TO THE WEINERS' VARIANCE REQUEST NO. 917, ZONING R-1B, BROUGHT BY RACQUEL AND SEAN McGOVERN

WILLING ZONING CODE VIOLATIONS AND MISREPRESENTATIONS OF THE APPLICANTS

Racquel and Sean McGovern of Boyne City, Michigan (on behalf of the Richard Weiner Trust) seek to improve and extend an existing accessory storage garage by adding a second story. The non-resident owners of the lot, the Weiners of Saginaw, Michigan, currently remain in willing violation of the Zoning Code for an illegal structure built after 1972 that encroaches on the Madions' property and violates Zoning Code setback requirements. The applicants, for themselves and on behalf of the Weiners, made misrepresentations to the Township regarding the existence of an existing survey showing the violation in their presentation of this variance request.

OBJECTION TO A SECOND-STORY OUTBUILDING ADDITION 4' FROM THE PROPERTY LINE

For the reasons set forth herein, the Madions object to the request for the variance as sought by the Weiners, namely improving and adding a *second story* to an existing, non-conforming storage structure situated 4' from the Madions' property line.

ALTERNATIVE VARIANCE FOR A SINGLE-STORY ADDITION WITH EXPRESS CONDITIONS

The Madions do not object to the issuance of a variance for improvements to the existing storage garage to ensure its continued use as a storage garage as long as such improvements are limited to: 1) a single story on the existing foundation with 2) no further encroachment of the improved structure into the side-yard setback (*i.e.*, any extension beyond the current foundation including roofs, eaves, etc.).

For reasons set forth herein, the Madions respectfully request that the Board attach the following conditions to any variance approval:

- (1) An express condition limiting the use of the improved storage garage *exclusively* to storage, with no permitted dwelling or sleeping space permitted;
- (2) the Owners and Applicants agree to such terms in writing; and
- (3) that portion of Weiners' paved tennis court and fence currently in violation of the 15' side setback requirement of the Zoning Code be removed and such violation be cured.

CURRENT ZONING CODE VIOLATIONS MUST BE CURED BEFORE A VARIANCE IS GRANTED

Whether variance is issued or not, the Madions nonetheless request that the Zoning Code Officer pursue action against the Weiners under the Zoning Code to cure the setback violation.

FACTS

Carl and Diane Madion purchased the lot on which their current home is located at 11710 Bluff Road in 1971 and have lived there continuously for the past fifty-four (54) years. They also own the unimproved lot south of and adjacent to their home which sits between the

Madion residence and the lot owned by the Weiners and subject to this variance request. The Madions' unimproved lot is approximately equal in width to the Weiners' lot and is suitable for the construction of a residence.

The Weiners of Saginaw use the Traverse City residence at 11692 Bluff Road (11-003-015-00) as a vacation property. Presently, there are three permanent structures on the lot: 1) the residence, a two-story structure situated approximately 4 feet from Madions' property line; 2) a single story accessory storage garage, the subject of the variance request, which also sits approximately 4 feet from Madions' property line; and 3) a 50'x100' (5000SF) paved tennis court circumscribed by a 12' high fence that was built after 1972 when the Peninsula Township Zoning Code came into effect, both of which encroach into the Madions' property and are in violation of the Zoning Code setback requirements.

In 2019, Dr. Madion engaged Gordie Frasier of Traverse City to conduct a survey of the property in preparation for a transfer of the unimproved lot to one of his granddaughters. Gordie Frasier completed the survey and staked the property lines. (2019 GF Job #19184 confirmed by Jeff Fouch of Gordie Frasier 4.11.2024). The professional survey showed a significant encroachment and side-yard setback less than the required 15' dictated under the Zoning Code. When Dr. Madion received the survey information, he approached the Weiners, showed them the stakes placed by Gordie Frasier, and asked that they remove the tennis court and fence from his property and comply with the setback requirement. They refused.

In 2020, Dr. Madion raised the issue of the encroachment and zoning code violation with Dave Sanger, Ordinance Enforcement Officer of the Peninsula Township Zoning Office, requesting that action be taken by the Township requiring the Weiners cure the violation of the side yard setback requirement in effect at the time the tennis court was built. Mr. Sanger confirmed that pursuant to the survey information, the tennis court and fence, non-conforming structures, were "not legal." Mr. Sanger confirmed that *"any portion [of the tennis court] on Madion's property is in violation, as is the main portion on Weiner's property."* (Sanger Email Correspondence 8/20/2020 attached hereto). Mr. Sanger obtained superimposed property lines overlaid on a photo image (attached Township file) are included in the Sanger correspondence with a less definitive view of any encroachment, albeit an inaccurate depiction of property boundaries when compared to those obtained through an on-the-ground legal survey. Mr. Sanger comments that if the survey and photo overlay did not "agree," further investigation by the Township would be required. No further mention of any investigation is noted, nor does Dr. Madion have record of any further investigation by the Township.

To the Madions' knowledge, the Weiners have never obtained an additional survey despite having years to obtain one prior to this request.

The unchallenged survey evidencing the encroachment and violation remains the most accurate and up-to-date evidence of the property boundary between the lots. The physical

stakes that remain on the lot (visible to the Board during its site visit to the property) accurately show the lot borders. Despite having knowledge of the survey and having seen the staked boundary lines, the McGoverns and the Weiners misrepresented to Peninsula Township's Director of Planning & Zoning that *no survey of the property existed*.

DISCUSSION

ALL OF THE REQUIRED BASIC CONDITIONS DO NOT EXIST TO SUPPORT THE REQUESTED VARIANCE

The Board of Appeals is authorized to permit variances to zoning code setback requirements as long as all of the required BASIC conditions and at least one of the SPECIAL conditions exist. (Zoning Code Section 5.7.3)

Under the Section 7.5.5(b) of the Zoning Code, the Zoning Board of Appeals is authorized to grant variances only when certain enumerated conditions exist. The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED ALL of the BASIC conditions listed herein and any one of the special conditions listed thereafter can be satisfied.

One BASIC and necessary condition for the approval of a variance is that *both* "safety and substantial justice" be achieved. (Zoning Code Section 7.7.5(b)) Substantial Justice would not be achieved by granting the variance requested by the Weiners, namely, the construction of a *two-story structure* in place of a pre-existing single-story storage garage.

Substantial justice requires fairness not only to the Weiners, but also to the Madions as direct neighbors and, in this case, to zoning-code-compliant residents of Peninsula Township. The Madions do not dispute that the accessory garage is itself nonconforming and was built on a lot that preexisted the Zoning Code, nor that an improved *single-story structure with a new roof* would result in increased safety. In these circumstances, however, permitting a two-story structure in place of a single-story storage garage a mere 4' from the property line would not result in *substantial justice* as required by the Code. Nor would it be fair to the Madions.

The Weiner vacation home is a two-story structure and is itself situated approximately 4 feet from Madions' property line. The exiting garage outbuilding sits just 4 feet from the property line as well. A double height garage outbuilding in place of the single-story garage would adversely affect the Madions' property, of equal width to the Weiner lot, restricting the placement of any future home on the lot and crowding it with two structures of double height walls situated so close to the property line, especially with the current encroachment of the Weiners' paved tennis court and full fence.

In this case, allowing the Weiners to add more to the garage (in this case vertically) than their entitlement under the Ordinance would not be fair to the Madions or to other township residents, and substantial justice would not be served. The Weiners are seeking permission for a variance from the very same zoning code which they have *knowingly* ignored despite knowledge that another structure on their lot, a 5000 square foot paved, tennis court surrounded by a 12' high fence, is illegal under the Zoning Code. They refused to remove it and continue to remain in violation of the Code. They misrepresented to the Township the existence of a valid survey evidencing accurate property lines which shows their violation of the existing Code.

Allowing a variance as sought to such a property would not result in "substantial justice." Indeed, permission to *exceed* what the property owner may otherwise be allowed, would result in substantial *injustice* not only to the immediate neighbor but also to residents who respect the Township's zoning regulations and authority.

A substantial *injustice* would be achieved by permitting a homeowner, currently in willing violation of the Zoning Code, a variance beyond that necessary to extend the use of the building and improve the safety of passersby. Fairness and substantial justice would not be achieved with respect to the Madions by allowing the structure to be modified to include a second story so close to their property line. Substantial justice would not be accomplished with respect to law abiding township residents who are comply with the Code. And, rewarding property owners who snub the Zoning Code requirements and ignore requests by a neighbor to comply would fly in the face of substantial justice.

A VARIANCE FOR A *SINGLE-STORY* IMPROVED STORAGE GARAGE
WOULD SECURE THE CONTINUED USE OF THE STRUCTURE,
ALL THAT THE WEINERS ARE ENTITLED TO UNDER THE ORDINANCE

The Peninsula Township Zoning Ordinance does not prevent a repair or alteration to a qualifying structure that "is necessary to secure or insure the continued advantageous use of the building or structure" provided there is no change in the use of the structure or any part thereof. (Zoning Code Section 7.5.4). The repair of the current accessory garage and a new roof would secure the continued, existing use of the outbuilding and protect the safety of individuals on the property. A variance for a less intrusive improvement would satisfy the requirements of the Code and would not harm the Madions' interests if granted with the express conditions described herein.

If the Weiners require more storage that a single-story garage would allow, a new structure could be extended to the south of the current foundation; the addition would then comply with current zoning setback requirements and result in no greater impact to the Madions than what already exists.

SPECIFIC WRITTEN CONDITIONS SHOULD ATTACH
TO ANY VARIANCE APPROVED BY THE BOARD OF APPEALS

Under the Zoning Code, the Zoning Board of Appeals is further authorized to use its discretion in setting forth conditions with the approval of any variance:

The Board may specify, in writing, such conditions regarding the character, location, and other features that will in its judgment, secure the objectives and purposes of this Ordinance. The breach of any such condition shall automatically invalidate the permit granted. (Zoning Code Section 5.7.3(3)(a))

The Madions do not object to the issuance of a variance for improvement to the existing storage garage, *limited to a single story on the existing foundation, with no further encroachment into the side-yard setback (i.e., any extension beyond the current foundation including roofs, eaves, etc.)*.

The Madions respectfully request that the Board attach the following conditions to any variance approval:

- (4) An express condition limiting the use of the improved storage garage *exclusively* to storage, with no permitted dwelling or sleeping space permitted;
- (5) the Owners and Applicants agree to such terms in writing; and
- (6) the removal of that portion of Weiners' paved tennis court and fence currently in violation of the 15' side setback requirement of the Zoning Code in advance of the commencement of any construction on the property.

Such conditions are necessary to protect not only the Madions' interests but due to the misrepresentations and unwillingness of the Weiners to comply with the Zoning Code. Based on the only survey on record that remains unchallenged by the Weiners, the Weiners are in violation of the Peninsula Township Zoning Code side setback requirement, have been aware of that violation since at least 2019, have refused to cure the violation, and have allowed Raquel and Sean McGovern, on their behalf, to make false representations to the Board about the existence of a survey marking the property boundary lines evidencing encroachment and setback violations. Without conditions attached to the approval of any variance, substantial justice would not be served.

Respectfully submitted,

Maureen Madion
on behalf of Carl and Diane Madion
11710 Bluff Road
Traverse City, MI 49686

Attachment: Dave Sanger Email Correspondence

Neighbor is Richard and Raj Wiener, 11692 Bluff (11-003-015-00). BS&A does show a 50 x 100 tennis court with 12' fence; sketch in BS&A does not place tennis court on the property to scale.

With the 12' wall, this tennis court is a structure; its installation, per Carl, was after 1972 and therefore the non-conforming structure is not legal. Thus, any portion on Madion's property is in Violation, as is the main portion on Wiener's property.

Carl reported that Raj Wiener refuses to remove the portion on his property, after he presented her last fall with a survey showing the encroachment. While this is a potential "adverse possession" claim, the tennis court is still a violation of the side yard setback requirements for Wiener alone or both property owners, depending on the potential claim.

Will you please look up these 2 properties on the latest drone photos and send me a copy? Please include the property boundaries on the photo. This will help us understand the issue.

If the photos support the violation, I will send a Violation Notice to the responsible property owner(s).

Thanks,

Dave

--
David K. Sanger
Ordinance Enforcement Officer
Peninsula Township Zoning Office
13235 Center Road
Traverse City, MI 49686

231-223-7318
231-216-1212 direct line

--
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From: "David Sanger" <enforcement.peninsulazoning@gmail.com>
 To: "Carl Madion" <cgmadion@charter.net>
 Cc:
 Bcc:
 Priority: Normal
 Date: Thursday August 20 2020 1:39:36PM
 Fwd: 11710 Bluff - Carl and Diane Madion

Carl,

Please review these drone pictures from Christina. They were taken in spring 2019. The property lines are based on the data for each property in the Township files.

If the pictures show that the property boundary with the Wieners disagree with the survey, we will need to investigate further, with the help of Sally Akerley, our Assessor.

Please let me know.

Dave

----- Forwarded message -----

From: Zoning <Zoning@peninsulatownship.com>
 Date: Thu, Aug 20, 2020 at 1:06 PM
 Subject: RE: 11710 Bluff - Carl and Diane Madion
 To: David Sanger <enforcement.peninsulazoning@gmail.com>



This is the latest pictometry photo of Madion's property.

Hope this helps.

Thank you,

Christina

From: David Sanger <enforcement.peninsulazoning@gmail.com>
Sent: Thursday, August 20, 2020 12:38 PM
To: Christina Deeren <zoning@peninsulatownship.com>
Cc: Warren Wahl <warren.peninsulatrustee@gmail.com>
Subject: 11710 Bluff - Carl and Diane Madion

Christina,

Warren referred a call from Carl Madion to me this morning. I spoke with Carl about his concern: neighbor's tennis court, per a recent survey, encroaches on his property. The neighbor refuses to remove the encroaching portion.