

PENINSULA TOWNSHIP

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PENINSULA TOWNSHIP ZONING BOARD OF APPEALS MINUTES

July 16th, 2024, 7:00 p.m.

1. **Call to Order** by Dolton at 7:00 p.m.

2. **Pledge**

3. **Roll Call**

Present: Dloski, Cowan, Dunn, Wahl, Dolton; Absent: None

4. **Approval of Agenda**

Motion made to approve agenda with additional item (introduction of new Planning & Zoning Administrator, Tori Westmoreland) by Dloski, seconded by Dunn.

Motion passed by consensus

5. **Conflict of Interest: none**

6. **Brief Citizen Comments (for items not on the agenda): none**

7. **Business:**

Variance No. 918, Zoning = R-1B - Coastal Zone

Applicant: Wayne Magee, 653 East Saginaw Highway, East Lansing, MI 48823

Owner: James Nye, 10191 Peninsula Drive, Traverse City, MI 49686

Property Address: 10191 Peninsula Drive, Traverse City, MI 49686

1. Requesting a variance from Section 6.8 of the Zoning Ordinance to reconstruct a second story of an existing non-conforming single-family residence with attached garage 13.3 feet from the side property line, where 15 feet is required.
2. Requesting a variance from Section 7.4.7(A)(1) & (2) to construct a second and third story addition to an existing non-conforming single-family residence with attached garage 12 feet from the edge of a delineated wetland, where 25 feet is required.

Parcel Code # 28-11-007-016-30

Dolton summarizes the process of variance approval by the ZBA. Then requests that Cram summarize the findings of fact for the requested variance.

Cram: Dispenses background information: The subject property is zoned R1-B - Coastal Zone - Single and Two-Family Residential; the properties to the north and south are also zoned R1-B. The property to the east is zoned R1-A and the West Grand Traverse Bay is located to the west. The subject property is 1.06 acres or 46,173 square feet. The minimum lot size for the R1-B zoning district is 25,000 square feet. The Peninsula

Township Zoning Ordinance was adopted in 1972. The subject property currently includes an existing two-story residence with an attached garage, covered front porch and above-ground decks. **Cram points out on the site plan:** the existing residence and rear deck, which they plan to maintain, as well as a covered front porch which will be removed. As the property sits today, it does not meet the required setbacks, but when it was originally approved in 2002, (the plans) showed the setbacks being met. By removing the existing covered porch, the applicant will decrease the non-conformity that exists. They will, instead, go up by using the existing walls of the structure. Notes there is also a shed on the property. The existing residence includes three bedrooms and two and one-half bathrooms. The existing residence and attached garage were constructed in 2002. There is a delineated wetland on the property. Mr. Nye was unaware of the wetland's existence when he purchased the property and discovered it only after doing tree thinning. Zoning Amendment No. 196 was adopted on May 22, 2018. Amendment No. 195 includes regulations for wetlands and required setbacks from delineated wetlands. As the home was built prior to the adoption of the zoning ordinance amendment requiring a specific setback from delineated wetlands, the existing structures do not comply with the current setbacks. There is also an existing shed on the property that is located within the delineated wetland that is the subject of a zoning ordinance violation. Mr. Nye was unaware that a land use permit was needed for this shed. The relocation of the shed is contemplated to occur and be a part of a future land use permit. As shown on the site plan, the shed is proposed to be relocated outside of the wetland boundary meeting all required setbacks. Cram asks for questions from the Board from staff and/or the applicant and his architect/builder who are present.

Dloski: It's my understanding that if, in fact, this variance is granted that the current footprint will not be expanded.

Cram: That is correct.

Dloski: And the deck that is non-conforming will be removed?

Cram: The existing covered front porch will be removed, but the existing rear deck will be kept.

Dloski: Is the rear conforming, or not?

Cram: The rear deck does not conform. It encroaches slightly over the side property line and towards the wetland.

Dloski: As far as the vertical construction, it will be constructed on the same basic footprint?

Cram: That is correct. The amount of impervious surface is actually decreasing with the removal of the non-conforming front porch and everything else is going up on the existing footprint. I tried to give, in the packet, the elevations so that you can see the existing two-story residence with attached garage with the proposal

Dloski: The original site plan (from 2002) provided does not show a rear deck.

Cram: It shows a porch addition being proposed, but the rear deck that exists is different than what was shown in the 2002 site plan.

Dloski: Did the Township approve it?

Cram: I don't know that. I do know that it existed when My. Nye purchased the property.

Dloski: And that is non-conforming.

Cram: It is.

Cowan: I have one question: there are two sheds on this map. The shed that is to be relocated is not there now, is it?

Cram: Correct.

Cowan: The shed that is there now is the one we saw at the site visit?

Cram: Correct. That is just going to move forward on the property, toward where the current RV is located.

Wahl: Asks a question about a plan that was not included in the packet.

Cram: That plan was pulled from the parcel file. That was the site plan that was included in the original land use permit issued in 2002. John had a question after the site visit and investigation into the parcel file brought up another document I thought would be helpful.

Cowan: The property line was not drawn correctly? This says it's conforming, but it's not.

Cram: The land use permit was based on this plan and we cannot say what happened with the builder...

Wahl: I was wondering, because it says wetland is flagged on there but there obviously wasn't zoning at the point. Maybe they just didn't document it because it was a non-issue (in 2002).

Dolton opens the public hearing portion of the meeting and requests to hear from the applicant, et al.

Ken Patterson, 8472 Peninsula Drive: Introduces himself as an Attorney with Smith and Johnson here in Traverse City. I appreciate you putting us on the schedule. This project has had some fits and starts. As Jenn knows, it started out with a bigger footprint. There is approximately 1100 square feet of addition that has been abandoned because we discovered there was a wetland issue and a setback issue. It's been carved back significantly. I think we can now see - your question was on point - that the plan is to build it exactly within the footprint to go up within allowable restrictions, in every way. Generally, as I go through the staff report that was prepared, pertinent facts are accurate and I think the findings set forth and all the seven conditions are there. It's not my intention to say a whole lot, other than to introduce myself and allow Wayne Magee, who is the applicant's architect for Mr. Nye (who lives in this residence) to talk about what the plan is, based on the drawings you see. With that, I'd like to introduce Wayne Magee.

Dolton: Asks when the rear porch was built.

Patterson: In 2002, when it (the home) was built. What we don't know is whether or not - when they built it in 2002 - if they built it within this footprint, right or wrong. It was helpful for Ms. Cram to find the site plan, but we do know that Mr. Nye had nothing to do with that construction. I'm not sure how concerned you are about the rear deck, sitting there now as a non-conforming structure, as it sticks out about a foot. If that's going to be a deal-killer, he's not that wedded to the deck. Frankly, it's no different as it sits there right now than the garage and the other stories where we want to go up on the existing footprint.

Wayne Magee, 653 E. Saginaw, East Lansing: I'm more interested in whether you folks have any specific questions about this building before I ramble on about it.

Dolton: Perhaps you should ramble first?

Dloski: What do you propose to do about the rear deck? It's non-conforming.

Magee: What would you like us to do? We left that as a non-issue because the building itself is already non-conforming. We've already taken off the front porch. If this is a make or break for the herculean efforts that Mr. Nye and the rest of us have gone through to get this proposal to this point, we'll take it down.

Dloski: Is that deck usable?

Magee: It's a functioning deck and it's in fine shape.

Cram: It's in great shape.

Dloski: Jenn, what do you suggest we do with it? Ignore it?

Cram: It is not part of this application. They are asking to leave the existing non-conforming deck in place and just go up over the structure. I didn't have an opinion about it.

Wahl: They're not changing that.

Cram: Yes. If they were looking to replace a non-conforming structure then the standards tell us that we would look to see a structure that is less non-conforming. They have accomplished that right now with the removal of the covered front porch three feet from the property line which has beautiful views out to the water and bringing this back to the 13.3 feet where the existing residence is. It's less non-conforming than what exists today.

Wahl: So, the deck is staying as is? You're not touching it? There's no renovation work going on with the deck?

Magee: No. Other than perhaps a little paint for touch up. Structurally it's extremely sound. It hasn't even been on our horizon to do anything to it.

Dloski: The only reason I ask is that if we have this again in another situation, we're going to have to deal with it. I want to make sure that what we do tonight is consistent with what might come up in the future. If we're going to ignore it, fine.

Dolton: What we always have as an option is, if we wish, to add a condition to any approval. We can certainly discuss whether that's something we, as a Board, wish to apply to this situation.

Magee: After having several consultations with Mr. Nye, he has several children and a couple of grandchildren. We're finding out that the way the house is built now is not fulfilling his family needs. We decided, at the beginning, that the best thing to do was go up, so we designed something to build over the garage because there's nothing there. We decided to go up a little further and have a very extensive master suite on the third floor. The original plan, which has - by the way - with the exception of a land use permit by this Township has already been approved by the County. We had an additional garage - a one car garage - set to the south of the building so that there was another 284' there, an additional 284' feet on the second floor and another 284' on the third. As Jenn has already said, we came across the issue that we were now encroaching on a wetland setback and in my idiocy I immediately said "let's chop off that and move back to the existing footprint". It wasn't until after I got that design done that Jenn said "well, you haven't done yourself any good because you are now in non-conformance and it doesn't matter that you're sitting on the footprint unless you go to..." you good folks. So, that's where we are now.

Cram: I have been working with Mr. Magee for some time. The other thing that was advantageous was when the plans originally came in, it also exceeded our maximum building height, but I let him know that we were going through the zoning ordinance amendment process and now the proposed building height complies. The change to the building height was advantageous because we removed the limitation on stories and went to a maximum height of 38'.

Dloski: If I understand this, the original plan was a little more aggressive than what they have here tonight?

Cram: They had a larger footprint, yes.

Dloski: So, they've actually downsized it to get here tonight.

Cram: Yes.

Wahl: I guess I'm a little confused about what happened in 2002. I know you can't answer this question, probably, but it looks like the wetland was delineated and based on whatever was presented - and if I'm a

homeowner buying this it looks like it's completely conforming, that it's within 25' of the wetland as well as the side yard setbacks...

Cowan: But there was no wetland designation (then).

Wahl: But it's flagged, and it's 25'.

Cowan: But that was not a state designation or a Township (designation).

Wahl: Discusses whether, per the original site plan, a variance may have been necessary.

Magee: Did an official third-party official come in and designate that, or did somebody just draw a line? Our designation - we had someone come in and start digging holes in the dirt...

Cram: It's flagged. It's not a straight line. It kind of meanders around the home and at the closest point it's 12' from the residence. It's possible, Ashley, that wetlands do grow or recede, so depending on what was happening with topography and hydrology, it's possible the wetland increased from 2002 to here. I can't say. I do know that in 2002 there was not the requirement to meet that 25' setback.

Dloski: Jenn, you're saying then, that the wetlands - as designated on this site plan - are not really accurate today as we sit here.

Cram: Correct. Mr. Nye has done a more recent wetland delineation. It was flagged with the pink flagging, for those that went out to the site. You can see that they are staggered.

Dloski: So, it's (the wetland) actually moved closer to the house?

Cram: Possibly, we cannot say for certain, but wetland boundaries to change over time.

Dunn: One thing I didn't really understand with the height: you can't go over 38' but this is 33', correct? It's conforming?

Cram: Correct. The previous Zoning Ordinance limited structure height to 2 ½ stories on the front.

Dunn: Now we've gone to feet.

Cram: Yes. The maximum number of stories at 2.5 was eliminated.

Wahl: The overhang is included in the variance?

Cram: Yes. Wayne (Magee), I recall us talking about this - we're measuring setback from that dark line (which is) the edge of eave and the hatch(-ed area) is the foundation.

Magee: Yes.

Dolton requests that any public comment in favor of the application be made at this point.

Cram: Though not noted in the staff report, staff was able to speak to the property owner that is most impacted by this (John Ansted) and he noted (verbally, on site) that he had no concerns with the proposed variance request.

Dolton requests that any public comment in opposition to the application be made at this point.

None.

Dolton closes the public hearing portion of the meeting to move to Board deliberation and an assessment/vote on the basic conditions.

Cowan: I think that the applicant is stuck with a bad map from the get-go. He bought the property in good-faith and the map was wrong. Now he is removing a porch to make it less wrong.

Board discusses that the existing rear deck poses no problem, that the applicant plans to use the existing foundation so as not to encroach on the wetland. No additional impervious structures will be constructed to influence how stormwater will impact the wetlands or drainage. **Dloski** mentions discomfort with the non-conforming rear deck, as leaving it as a dangling participle, but understands the realities of the situation and

appreciates the downsizing of the project in acknowledgment of setbacks and wetlands. **Wahl** mentions a decrease of surface area.

Dolton requests the Board deal with both variances at once, rather than in separate rounds as the requests are intertwined.

Dolton requests that Cram go through the six (6) conditions for variance approval (each board member needs to give a reason for their 'yes' or 'no' vote.). Requests that any special conditions required of the applicant, as part of the variance, imposed by the Board are clarified. Cram notes that the removal of the existing non-conforming covered porch and the relocation of the existing shed will be addressed in the land use permit process. The applicant will also need to obtain a partial-demolition permit. Magee clarifies that "removal of the existing porch" is not precisely correct as there will be a smaller front porch on the house which will not extend past the existing encroachment area. Dolton suggests that a revised condition could be noted as the existing front porch will be removed so that no remaining porch extends into the side yard setback further than the current violation of 1.7'.

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

(A). 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.

Dunn: Yes; I agree based on staff comments and other discussion.

Dolton: Yes; The condition has been met. None of the reasons for the variance result from the action of the applicant.

Cowan: Yes; I agree with previous comments from committee members.

Dloski: Yes; I agree that the standard has been met. The owner is building on the foundation as it exists and not increasing the non-conformity, and is in fact, decreasing the non-conformity. Nothing has been done to negate the situation.

Wahl: Yes; For reasons already stated.

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

Wahl: Yes; It is definitely not a result of actions of the property owner or previous property owner. It appears that the need for this variance is due to some wetlands and topography issues.

Dloski: Yes; I agree for the reasons stated by Wahl.

Cowan: Yes; I agree with Wahl and Dloski.

Dunn: Yes; I am with Wahl.

Dolton: Yes; For reasons already stated.

(C). 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.)

Dolton: Yes; The applicant is not responsible for the misplacement of the existing structure, so compliance would be unnecessarily burdensome. I believe the standard has been met.

Wahl: Yes; For the reasons stated. I think it's important to note that this is an applicant that is decreasing the amount of surface and actually making the structure more conforming.

Dunn: Yes; I agree based on staff and board comments.

Dloski: Yes; I agree. I'm hanging my head [sic] on the fact that they are not expanding the footprint whatsoever.

Cowan: Yes; I agree with all the comments. In addition, they are stuck with a house that was built before they bought it and there was no wetland setback required then.

(D). 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.

Dunn: Yes; Specifically because of the staff comment which covers it nicely.

Wahl: Yes; I agree with Dunn.

Dolton: Yes; The standard has been met.

Cowan: Yes; Particularly since the neighbor said 'go for it'.

Dloski: Yes; Especially because they've worked with you, Jenn, and they've decreased what they initially wanted to build. I think that's very relevant and a compliment to them that they understand where they're at.

(E). That the variance will not cause adverse impacts on surrounding property, property values or the use and enjoyment of property in the neighborhood.

Wahl: Yes; A neighbor is very supportive and it will not cause any adverse impact.

Dloski: Yes; In fact, it'll probably cause less impact as they're moving that deck (porch) away a little bit from the neighboring property and the property owner is okay with it.

Cowan: Yes; I agree with previous comments.

Dunn: Yes; Based on staff report and board comments.

Dolton: Yes; I agree that the removal of a portion of the front porch that is into the side yard setback beyond the line of the house is an improvement and the design itself may well be considered to be an improvement to the neighborhood as well.

(F). 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.

Dolton: Yes; No change in use.

Dunn: Yes; Based on staff comments.

Dloski: Yes; No change in use. It's residential; it's going to stay residential.

Cowan: Yes; I agree with other comments.

Wahl: Yes; No change in use.

Cram summarized the vote results:

Condition A had 5 'Yes' Votes and 0 'No' Votes.

Condition B had 5 'Yes' Votes and 0 'No' Votes.

Condition C had 5 'Yes' Votes and 0 'No' Votes.

Condition D had 5 'Yes' Votes and 0 'No' Votes.

Condition E had 5 'Yes' Votes and 0 'No' Votes.

Condition F had 5 'Yes' Votes and 0 'No' Votes.

All six conditions were found to be met by all five (5) ZBA members and so both variance requests (#1 & #2) have passed.

Dolton: Now that the (basic) conditions have been met at this time I'll entertain a motion for approval of both variances subject to the (special) conditions mentioned earlier. Special conditions are as follows: 1) any remaining front porch does not extend into the sideyard setback further than existing footprint of the house and 2) the rear storage shed be relocated to a spot that meets all setback requirements.

Dloski made a motion that the variances be approved with Cowan providing a second.

Roll call vote: Dunn: Yes; **Wahl:** Yes; **Dolton:** Yes; **Dloski:** Yes; **Cowan:** Yes

Variances approved by consensus.

8. Approval of ZBA Meeting Minutes from June 18th, 2024:

Motion to approve minutes as-is by Dunn, seconded by Dloski.

Motion passed by consensus.

9. Citizen Comments: none

10. Board Comments:

Dloski: I want to commend Jenn because I think this is a good example of filtering down to us what we really need to get, instead of the grandiose ideas of what they think they can do, which puts us in a bind and them in a bind. I appreciate Jenn working with these people to make sure that they bring, to us, the minimum they need.

Wahl: It also takes an applicant, too, to do their due diligence. This is a situation where, if I'm buying a piece of property and I see this, that's not the property owner's fault. You think you're in compliance. It's good when people do their due diligence.

Cram: Thank you for acknowledging that. I do try to help people understand the conditions of approval that need to be met and the way that the board has voted in the past. Thankfully, this applicant was receptive to that and wanted to move forward. That's not always the case. We can talk to them and make recommendations, and in some cases they want to move forward with what they have.

11. Adjournment

Dloski moved to adjourn at 7:53 p.m. with a second by Cowan.

Motion passed by consensus.