

Peninsula Township
Zoning Board of Appeal
July 19, 2022 7:00 p.m.
Lola Jackson Recording Secretary
DRAFT MINUTES

**PENINSULA TOWNSHIP
REGULAR MEETING
ZONING BOARD OF APPEALS
13235 Center Rd., Traverse City, MI 49686
July 19, 2022
7:00 p.m.
MINUTES**

1. **Call to Order** by Dolton at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Serocki, Elliott, Dolton, Wahl, Dloski. Jacob Witte, attorney on teleconference.
4. **Approval of Agenda** Dolton added approval of minutes from March 15, 2022 to agenda. Dloski moved to approve amended agenda with a second by Elliott. **Approved by consensus**
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None
7. **Business:**

1. Request No. 901, Zoning R-1C

Applicant: Dean & Michelle Kokkales, 2353 Weber Rd., Dexter, MI 48130

Owner: Dean & Michelle Kokkales, 2353 Weber Rd., Dexter, MI 48130

Property Address: 9722 Center Rd., Traverse City, MI 49686

1. Requesting a variance from the required sixty (60) foot setback from the ordinary high water line and for a proposed addition of 400 square feet to be constructed within the ordinary high water line setback on an existing legal non-conforming lot of record.

Parcel Code # 28-11-017-002-00

David Glenn- Kuhn Rogers PLC 4033 Eastern Sky Drive, Traverse City 49684

[Recording sound equipment malfunction]

Glenn explained why this request fulfilled all of the 6 conditions required for a variance on a non-conforming lot. [See packet for documentation and application]

[Sound resumed taping]

We have not heard of anyone who is against it except The Watershed, whose letter we just received today. Quite frankly, they send these letters out to anyone who wants to build near the water. I don't think anyone is opposed to this in the neighborhood. The neighbors were taken into consideration. They do not want to block views or lose the aesthetics. This is a

stretch where all the cottages look similar as they were all built around the same time. The applicant wants to preserve that look, that cottage feel, which is evident with all the neighbors along that stretch. They don't want to build a monstrosity or make it look like a mini-mall. What they want to do is preserve the cottage feel, allowing the structure to evolve. There is no adverse impact and I think the opposite is true. This seems like a benefit to the neighbors and the ones we have talked to are willing to put their views in writing. Their values will go up and they certainly will not go down. Their views will not be impacted and they will not have to deal with further encroachment toward their property. The next one (condition) is number six and is easily satisfied as the variance shall not permit the establishment of any use which is not permitted by right and shall remain a single family unit. They are going to use it as their home. Overall, it meets all the elements of a variance I think in a very reasonable way. I do want to address the letter we received from The Watershed Committee (Center) literally hours ago. We value their concerns and the preservation of the shoreline and the quality of the water. This is extremely important to all of us, especially the applicants, who live on the water. The last thing they want to do is compromise in that area. We do not agree with the legal positions in that letter. Their first point is that the setbacks are there to preserve water quality. Our plans do not call for the structure to get any closer to the water. The envelope stays the same in proximity to the water and extends down the same plane. You are not going to see any impact as far as preservation of the water. The existing stabilization is going to remain the same. They are going to do everything to maintain stabilization of the lot. If you look at the topography of the lot it may be different than other lots that may have some issues with water coming up and meeting the structure, which is one of the main concerns with the ordinary high water mark. There is very little concern here and it is the same level that exists, which is minimal as it is going to be on the same plane. The next concern is about variances and we have met all of those conditions. The next item cited is Zoning Ordinance 7.5.5. and is actually misapplied and is concerned with the administrative aspect. It does not deal with a variance. There are 5 different requirements that we meet. The first one is that the shoreline is stabilized and that is no problem. Assurances there will be no damage by wave action and we have addressed that. There is no additional detriment to neighboring land owners and feel it is a benefit to neighboring landowners. Shoreline vegetation will be preserved and there will be no sea walls. The other item is increased safety to residents. We have addressed this multiple times now, especially for occupants of the house. We have met all the requirements they have raised in their letter. We respect their letter and wanted to get it on the record that we take their concerns seriously. We are concerned about the issues they raised and feel we have adequately addressed them. If any of you feel we haven't, we are more than happy to explain further. We have provided many similar examples after having gone back and read minutes from the last decade. We have come up with some pretty good examples where similar variances have been granted. This is a very unique area and township that you don't see in this region with its shoreline and roads. Variances have been granted and rightly so. I want to turn it over to the homeowners to answer any of your questions.

Dean and Michelle Kokkales 2353 Weber Rd. Dexter, MI 48130

Dean: we are looking to improve our situation here. We have my mother who is almost 91 and my wife's mother is 83 and most likely one of us will be taking care of them. We currently have one bathroom with a toilet and a tub. We are hoping to do a walk in type shower for our parents. We love the style of the house. Our neighbors across the street just built their house and it is really important to us that we do not impede their view.

Michelle: I would like to add that we have been here 11 years. We love the house and the neighborhood. I am retiring this fall and want to bring my mom up here more. I am the primary caregiver as the only child after my brother passed away. We are just looking for some support.

Serocki: I have noticed a basement. Is that a full basement?

Dean: yes, it is.

Serocki: where is the septic field located?

Dean: the septic field is located up near the garage and road. It is 28 feet to the septic field. The 2 tanks are located on the westerly side of the sidewalk.

Deeren: would you have to move the tanks?

Dean: there is a possibility. I talked to Brent Wheat with the health department. I told him what we wanted to do and he pulled up my survey. The only stipulation is if the tank is 5 feet from the footing, it needs to be moved. There is a possibility that one tank would need to be moved.

Dolton: what is the square footage of the house?

Michelle: just over 1,100 square feet.

Dolton: is this your full time residence?

Dean: not right now.

Dloski: you said you purchased the house approximately 11 years ago. Were you made aware that this is a non-conforming property?

Michelle: we were not.

Dloski: there is a deck on the lake side of the house. Was that there when you purchased the home?

Michelle: yes

Joseph Quandt Kuhn and Rogers PLC 4033 Eastern Sky Drive, Traverse City 49684

Quandt: I just want to bring up two important clarifications. The variance request does not include any additional non-conformity. The ordinance created the non-conformity and this does not increase dimensionally on any side the non-conformity. It does not encroach further into the setback area toward the high water mark; it is just in the ordinary high water mark. It does not further encroach on the side lot or the front lot line either.

Dolton: you are increasing the non-conformity of the lot coverage by 400 square feet.

Quandt: it does. From the stand point of whether it increases non-conformity you would actually have to be water facing in front of the horizontal plan. As a matter of law you would have to be forward with that horizontal plan where the front of the house is currently on the

bay side.

Dolton: I would argue this is increasing the non-conformity of the lot coverage.

Quandt: we are already below the lot density. It is important in element number 3 it is read in the disjunctive and not the conjunctive. 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. In this case it is not only renders them unnecessarily burdensome, it renders them impossible.

Dolton: if you reference the existing draft of the zoning ordinance 7.5.5 that was amended back in 2016 and the language was amended in its entirety. The only thing remaining in 7.5.5 is that the zoning administrator will issue special use permits for non-conformity residences as long as all of the conditions are met.

Dolton: is there anyone here who would like to speak in favor of the request. Hearing none is there anyone wishing to speak against the request. Hearing none, I now close the public hearing portion of the meeting and bring it back to the board.

Elliot: I am having trouble getting past the increasing non-conformity. This is a very sensitive area and habitat.

Dloski: I also have a problem with it. When a person buys a property, they should know they are buying a non-conforming structure. You cannot make certain changes without having a variance on a non-conforming property. They have not fulfilled the requirements for a variance.

Wahl: I also have trouble in expanding non-conforming lots.

Serocki: I keep going back to 7.5.1, paragraph 2 regard non-conforming structures. "It is not the intent to allow significant increases in the intensity of previously established residential use on otherwise unbuildable lots." So the non-conforming aspect is going to be an increased.

Dolton: I turn to the intent of the zoning ordinance. The issue with non-conforming lots is while they are grandfathered in, the ordinance doesn't favor expansion. You are allowed to replace by modifying internally, but ideally we would not have any non-conforming structures. The Watershed Committee (Center) raises a valid point that if you create a hard structure versus a malleable structure, you are at some risk for filtration into the Great Lakes. This has been a consistent concern. I find the applicants extremely conscientious. These structures were built as summer cottages and many of them are now full time residences. I can understand you would like this to be a place for both your parents. This structure already has permitted residential use. The board does not have the power to require how you configure an internal space. There is nothing in the ordinance that prevents you from reconfiguring the existing internal space anyway you want.

Dloski: I want to be clear that each case is heard on its own merit and it does not set precedent for any future variance request.

Wahl moved to consider the 6 conditions needed for variance request 901 with a second by

Dloski.

Approved by consensus

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

1. That any variance from this Ordinance: a) That the need for the variance is due to unique circumstances or physical conditions, such as narrowness, shallowness, shape, water or topography, of the property involved and that the practical difficulty is not due to the applicant's personal or economic hardship.

Yes: Elliott, Dolton, Wahl Condition has been met

No, Condition has not been met: Dloski: I voted no because when the property was purchased they should have known it was non-conforming and certain changes would require a variance.

Serocki: This house has 3 bedrooms and a bathroom, so I do not feel this is due to narrowness, shallowness, shape, water or topography. The house is functional.

Jacob Witte, the attorney on the teleconference line requests those who vote no to give the reason for their vote. This will help provide a clear record of the consideration. Repeated condition 1 vote (reasons included).

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

Yes: Wahl Condition has been met

No: Condition has not been met

Elliott: no, the non-conformity already exists.

Dolton: no, without the addition there would be no need for the variance.

Dloski: same as Dolton and the owners should have known this was a legally non-conforming property

Serocki: no, if they want to put an additional structure on their property they will need a variance. Their property is already within the ordinary high water mark.

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: Condition has not been met

Dloski: they have owned the property for a number of years and they can configure it internally any way they want without a variance.

Dolton: no, the same reasons as Dloski.

Elliott: no the proposed expansion does not make the property substantially safer.

Wahl: no, same reasons that have already been expressed. There are alternatives that would not need a variance.

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Serocki: no, I agree with Dloski.

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: Wahl Condition has been met

No: Condition has not been met

Serocki: no, I do not see how this would help other property owners

Dolton: no, again we go back to the purpose of the ordinance. This is contrary to the point of having non-conformity structures and not wanting to expand them. In my term on the board we have not permitted non-conforming structures to expand. We are not doing substantial relief to other property owners.

Elliott: no, the same reasons that have been stated.

Dloski: no, I agree with Dolton.

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: Serocki, Dolton, Wahl Condition has been met

No: Condition has not been met

Dloski: no I do not think it will.

Elliott: no, I agree with Serocki about the basement. The basement is already within the high water mark

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, Dolton, Wahl Condition has been met

No: Condition has not been met

Elliott: no, other people want to build but we do want not set precedent.

Dloski: no

Deeren: this is an all or nothing vote. Conditions 2, 3, 4 were not met.

Dolton: unfortunately, 3 of the conditions were not met, so I need a motion to deny the variance.

Dloski made a motion with a second by Serocki that Request 901 be denied.

Yes: Serocki, Elliott, Dolton, Wahl, Dloski

Dolton: Unfortunately, your request has been denied.

2. Request No. 902, Zoning R-1B

Applicant: Gerald & Kathy Roster, 7730 Peninsula Drive, Traverse City, MI 49686

Owner: Gerald & Kathy Roster, 7730 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 eleven (11) foot setback in order to re-construct a garage 28 feet by 48 feet that was destroyed by fire.

Parcel Code # 28-11-325-025-55

Gary Mannor 17368 Peninsula Drive

I am working with the home owner to rebuild a 28X40 foot garage located at 7730 Peninsula Drive. In 1988, the Rosters had the garage built. The back corner of the garage is 15 feet off set and it lines up with the corner of the house and is 12 feet 8 inches off and that is the non-conforming part. There was an error in measurement when the garage was built. I brought my laser out and went from the front stake to a stake back on the hill. Deeren and I discovered the front corner was off. We are building the exact same garage with the exception of reducing the size by lowering its height. So rather than expand a non-conforming structure, we are minimizing the structure. It is the same footprint on the same foundation and lowering the building by approximately 2 feet. We looked at the zoning ordinance 7.5.3 that non-conforming buildings that were destroyed by fire, collapse or acts of God are allowed to be rebuilt. The burnt out garage does affect the neighborhood. There is just a slab sitting there and it is not a good looking site. I am sure the neighbors would like to see it rebuilt. In order to move the building 2 feet, we would need to bring in heavy equipment, and ensure proper shoring. This would be much more disruptive to the community. We ask that the zoning board of appeal approve the rebuilding of the garage with the same look. There is one conforming house in this neighborhood as the rest were built before the zoning laws.

Dloski: you have a large metal container on the site now. Can you tell me what that is for?

Mannor: anything salvaged from the fire was put in there. It is on the slab. I was truly dumbstruck when I went to Deeren to get a land use permit and we discovered it was now non-conforming. Anyone who is in the construction business knows you order something and it may take a year. The trusses I ordered came much quicker than I expected.

Deeren: so the metal container will be gone once you get the variance?

Roster: the store container costs \$140 per month, so yes it will be gone.

Deeren: there was no bathroom in this structure, correct?

Mannor: Correct.

Dolton: is there anyone who would like to speak in favor of this request?

Dan Stoudt 7748 Peninsula Drive

I am the closest neighbor and I cannot tell you how the contractor screwed up in the measurement. I love the iron shed you hate so much. I do think it should be removed. The site is just plain ugly and I am in support of the rebuilding of the garage. They have been good neighbors. I am the one most impacted as their garage is 5 feet from my property and I would like to see it rebuilt.

Dolton: is there anyone who wishes to speak in opposition to the request? Hearing none, I bring it back to the board.

Dloski: this request fits perfectly under 7.5.3. This will not be detrimental to the health, safety, and welfare and that substantial justice is achieved.

Deeren: they only need a variance now that it has been discovered the structure was encroaching on the property line due to a mis-measurement.

Dolton: I am in agreement with section 7.5.3. This was an error in placement in 1988. I need a motion to consider the 6 conditions for request 902.

Serocki moves to consider the 6 conditions with a second by Dloski.

1. That any variance from this Ordinance: a) That the need for the variance is due to unique circumstances or physical conditions, such as narrowness, shallowness, shape, water or topography, of the property involved and that the practical difficulty is not due to the applicant's personal or economic hardship.

Yes: Wahl, Dloski, Dolton, Elliott, Serocki Condition has been met

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

Yes: Wahl, Dloski, Dolton, Elliott, Serocki Condition has been met

3. That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)

Yes: Wahl, Dloski, Dolton, Elliott, Serocki Condition has been met

4. That the variance will do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

Yes: Wahl, Dloski, Dolton, Elliott, Serocki Condition has been met

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

Yes: Wahl, Dloski, Dolton, Elliott, Serocki Condition has been met

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

Yes: Wahl, Dloski, Dolton, Elliott, Serocki Condition has been met

Dolton: All 6 conditions have been met. Called for a motion.

Dloski moved to approve request variance request 902 with a second by Serocki.

Roll call Yes: Wahl, Dloski, Dolton, Elliott, Serocki

Deeren: the variance is approved.

8. Approval of Minutes from April 19, 2022 Regular Meeting. (Added approval of minutes from March 15, 2022) Minutes approved with correction from "approve to consider the 6 conditions"

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from March minutes. **Moved to approve by Wahl with a second by Serocki.**

Approved by consensus

9. Citizen Comments None

10. Board Comments Deeren: there is one case for the August 19, 2022.

11. Adjournment Dloski moved to adjourn with a second by Wahl. Approved by consensus

Adjourned at 8:10 p.