

PENINSULA TOWNSHIP

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PENINSULA TOWNSHIP ZONING BOARD OF APPEALS MINUTES

August 1, 2023
7:00 p.m.

1. **Call to Order** by Dolton at 7:00 p.m.
2. **Pledge**
3. **Roll Call** Dloski, Wahl, Dolton, Cram-Director of Planning and Zoning, Wikar- Planning and Zoning Administrator, Chris Patterson- township attorney. Absent- Ammerman, Elliott has resigned from the board effective today, August 1, 2023. Wikar was introduced by Cram.
4. **Approval of Agenda** Dloski moved to approve the agenda with a second by Wahl.

Approved by Consensus
5. **Conflict of Interest** None
6. **Brief Citizen Comments – (for items not on the Agenda)** None
7. **Business:**
 - a. Approval of Minutes from the May 16, 2023, Regular Meeting
Dahl moved to approve the minutes with a second by Wahl. **Approved by Consensus**
8.
 - a. Policy Discussion Non-conforming Uses and Structures
Cram- There have been some questions regarding how the ZBA has interpreted some of the aspects of non-conforming uses and structures. I have also discovered there have been land use permits issued for the expansion of non-conforming uses that did not come before the ZBA and they should have. I have also reviewed the minutes of the ZBA and there may be some confusion about how we handle the replacement of non-conforming structures. The minutes from the township board meeting on July 11, 2023, are included so that the ZBA is aware of the outcomes the township board, our elected body wants to see based on the zoning ordinance, the master plan and community input. Land use permits have been issued that violate our zoning ordinance. Some were issued that did not follow the appropriate process of coming before the ZBA and this is concerning to the board. The board does not want to see non-conforming structures expanded vertically (going up) or horizontally (going

out) unless it is for sanitation or safety.

Section 7.5 Non-Conforming Uses and Structures: (REVISED BY AMENDMENT 171B)

Section 7.5.1 Intent and Purpose:

Non-Conforming Use. *At the discretion of the owner, the lawful use of any building, structure, land or premises existing prior to the effective date of this Ordinance, although the use does not conform to the provisions of this Ordinance, may be continued; and such use of any building may be extended throughout such building, provided no structural changes be made therein except those required for safety and sanitation.*

Cram- one example of an appropriate expansion to a non-conforming use might be if someone is proposing an addition to an existing non-conforming structure to increase the size of their bathroom to make it ADA compliant for a wheelchair. Another example is where someone has an internal spiral staircase that does not meet the current construction code. For them to meet the construction code for safety, they need more space. They may need to expand vertically to obtain the rise and horizontally for the required run. These are examples of the types of additions related to safety and sanitation.

Dolton- I am not happy with the word “use”, which is a loaded word for zoning concerns. Use implies different items; are we talking about residential versus commercial versus agricultural. The ZBA does not deal with changes of use, and use will stay the same.

Cram-you recently saw an application where they wanted to convert existing boat storage into a finished laundry room connected internally to the existing dwelling. It is true that the ZBA cannot approve exceptions for uses not authorized by the zoning ordinance but does consider how the use of spaces may change. Both uses of the same space are accessory to the overall residential use of the property and are allowed uses in the zoning ordinance. We do need to look at these spatial relationships.

Section 7.5.1 Intent and Purpose:

Non-Conforming Structure. *It is the intent to allow the continued use of a non-conforming structure. It is also the intent that the Zoning Board of Appeals may grant a variance to move or reconstruct a non-conforming structure where the structure was legally built on parcels that would be otherwise unbuildable due to overlap in the yard requirements. It is not the intent to allow significant increases in the intensity of previously established residential use on otherwise unbuildable lots. It is not the intent to allow the construction of a residence on a vacant parcel where yard requirements meet or overlap such that there is no buildable area on the parcel.*

Cram- adding to the footprint or adding another floor/story even if you are not adding bedrooms can increase the intensity of the use. A larger footprint or increased floor area may require more parking on site or displace other uses of the property.

Dloski- then we would need to take out the word “significant” because that implies you could grant an increase of anything which is not significant. I think this is the same as 7.5.6, which says “substantially” the same. What does that mean?

Wahl- if a cottage meets all the setbacks and there is a request to go up vertically, this might include an increase in the intensity of use.

Dolton- this board has considered those types of cases in the past and used that for basic condition denials. Items a and b under 7.5.1 are both intent paragraphs and they do not offer specific standards for approval.

Cram- you want to look at both intent and purpose to understand where and how the standard should be applied.

Dolton- is there a measurable standard we can apply? If not, we need to choose our words more carefully.

Dloski- if the township board does not want to expand non-conforming structures, then you have to take the word significant out. It is not the intent to allow increases in the intensity of use. We have to wrestle with what is significant or what is not significant.

Wahl- for me use and structure are different, so when you think of the non-conforming use, then there needs to have a provision with regard to the use of the structure. One of my issues is when you go down to 7.5.4 about the repair and alterations of non-conforming structures, we are talking about altering a non-conforming structure, which is generally what people are looking at doing. We have a non-conforming structure we want to alter in some way by doing an addition. As a board we would like tighter language.

Cram- understood. moving on to

Section 7.5.2 Change of Use: *Whenever the non-conforming use of any structure or land is changed in whole or in part to a conforming use, such use shall not thereafter be reverted to any non-conforming use. If the non-conforming use of any building, structure or land is discontinued through vacancy, lack of operation or otherwise for a continuous period of twelve (12) months, then any future use of said building, structure or land shall conform, in its entirety, to the provisions of this Ordinance; provided, however, that the Board of Appeals may, upon application within six (6) months of the termination of said period, permit the resumption of such non-conforming use.*

Cram- if the non-conforming use ceases to exist for 12 months, then it cannot revert back.

Dolton- one of the properties we looked at well over a year ago was on Bluff Road. They wanted to raise the foundation and go up another story and have road level parking. This was denied for several different reasons and lost on an appeal. They gutted the building, and it is not being lived in as a residence any longer; how would this section apply if they do not sell it and have a new owner within 12 months.

Cram- the use of the property is still residential. Someone could come in and repair the non-conforming structure and use it residentially. As an example, someone recently asked me

about Old Mission Associates Landscaping. The property is not zoned commercially, but the business is there. Someone asked if they could expand the use on the property. I pulled the parcel file, and learned before it was Old Mission Associates, the building had been used for a well drilling company. This was prior to the adoption of the zoning ordinance. The uses of the property were similar in nature and the zoning administrator allowed them to continue to use the property for a similar business but made it clear that the business was limited to what existed. If Old Mission Associates decided to sell and move and if the property was vacant for a year, then no one could come back in and use this for a business or commercial property.

Dolton-the word “use” is clear and a situation like this would probably not come before the ZBA.

Cram-you would only see it if the zoning administrator determined the use had ceased to exist for over a year and the applicant disagreed with the determination and then they could appeal the determination to all of you and then you would have to consider the facts.

Section 7.5.3 Reconstruction of Damaged Non-Conforming Structure: *Nothing in this Ordinance shall prevent the reconstruction, repair or restoration and the continued use of any non-conforming building or structure damaged by fire, collapse, explosion, acts of God or acts of the public enemy, subsequent to the effective date of this Ordinance, wherein the non-conforming user has first obtained the approval of the Board of Appeals, wherein the Board of Appeals has first determined that the continued use will be substantially the same as the previous non-conforming use and that such continued use will not be detrimental to the health, safety and welfare and that substantial justice is achieved.*

Cram-these are events that are outside the owner’s control and the structure could be rebuilt in a similar fashion as what existed before the disaster.

Wahl- suppose a house was in disrepair and went into foreclosure.

Cram- the structure has not been destroyed or damaged. The structure might need improvement and repair. This applies if someone lost a building to fire or flood. The property could be rebuilt to what was destroyed.

Section 7.5.4 Repair and Alteration of Non-Conforming Structure: *Nothing in this Ordinance shall prevent the repair, alteration, reinforcement, improvement or rehabilitation of a non-conforming building or structure or part thereof existing at the effective date of this Ordinance that may be necessary to secure or insure the continued advantageous use of the building or structure; provided, however, that such repair, alteration, reinforcement, improvement or rehabilitation proposes no change in the use of said building or structure or any part thereof.*

Cram-a person can update the electrical, put on a new roof, or replace windows. What cannot be changed is the footprint/floor area of the building.

Section 7.5.5 Additions to Non-Conforming Structure:

- (1) *The Zoning Administrator shall issue a land use permit for an addition to a lawful non-conforming structure provided all of the following are met: (SEE FIGURE 3)*
 - (a) *the addition is not located in any required yard or ordinary high water mark*

setback; and

- (b) *in addition to the above yard and ordinary high water mark setback requirements, all other applicable dimensional requirements on the subject parcel shall be satisfied (other than what is lawfully non-conforming).*

(REVISED BY AMENDMENT 176A) (REVISED BY AMENDMENT 190)

Cram-if someone wants to do an addition to a non-conforming structure and it meets all the dimensional requirements, the request does not have to go before the ZBA. They could get a land use permit.

Dloski-if I have a 1,200 square foot house and I want to put a 1,200 square foot addition, I could do that?

Cram-if the structure was non-conforming with regard to say the ordinary high-water mark, that second floor addition would also be non-conforming. The zoning administrator could not issue a land use permit and the request would have to come before the ZBA.

Dloski-so not meeting the setbacks on any expansion of a non-conforming structure cannot be approved administratively by the zoning administrator.

Cram-an addition to a non-conforming structure can be approved if the addition meets the dimensional requirements. You are not increasing the non-conformity.

Section 7.5.6 Moving or Replacing Non-Conforming Structure: *The Township Zoning Board of Appeals may grant a variance for moving or replacing a residential structure on a legal non-conforming lot so that the continued intensity of residential use of the lot is substantially the same as in the pre-existing structure, provided all of the following are met:*

- (1) *The moved or replaced structure is less non-conforming than the previous structure;*
- (2) *There is increased safety to the residents of the structure and to the traveling public on the road providing access to the parcel;*
- (3) *Safety and substantial justice is achieved;*
- (4) *If the variance allows the structure to encroach into the setback from the Ordinary High Water Line, conditions of approval shall include:*
 - (a) *provisions for stabilization of the shoreline so that the structure is not likely to be damaged by high water or wave action;*
 - (b) *there is no additional detriment to adjacent properties;*
 - (c) *shoreline vegetation is existing or established consistent with the intent of Section 7.4.4 Removal of Shore Cover ; and*
 - (d) *sea walls will not be allowed unless it is determined that there is no feasible alternative.*
- (5) *In addition to (1) through (4) above, the subject parcel shall also meet all of the basic and special conditions as provided for all variances in Section 5.7.3. (REVISED BY AMENDMENT 176B)*

Dolton- based upon these it would be difficult to have any kind of significant expansion.

Wahl-one problem occurs with the Neahtawanta properties because there are many small lots; these are the outliers.

Cram-as this is the only zoning ordinance we have, this needs to apply to these situations as well. Please bring any questions you have, and we will get them answered for you.

Dloski-I think we should make Section 5.7.3 consistent with the definition of practical difficulty in the zoning ordinance.

Dolton-is unnecessary hardship generally a standard for use variances whereas practical difficulty is for dimensional variances? What the ZBA looks at are dimensional variances.

Patterson- if you get a potential use question, but you don't have an explicitly stated standard other than asking, you can make a decision.

Wahl-so unnecessary hardship and practical difficulty have two separate standards depending on what type of variance is being requested. The interpretation is different under the law, and maybe not our ordinance if you need to have more consistency. My understanding is one standard is more difficult to prove than the other.

Dolton-say they met one of the standards under discontinuation or vacancy or lack of operations or some other reason for that 12-month period, so she is denying them the right to continue with the prior use because the time frame has expired. For approval for that continuing use, the ZBA cannot grant that approval. It would have to be the township board that would say yes; we could not allow some other non-conforming use to that property.

Dloski-let me ask this question regarding 7.5.2 regarding the last two lines. "that the Board of Appeals may, upon application within six (6) months of the termination of said period, permit the resumption of such non-conforming use." Are we not granting a use variance, which the zoning board of appeals does not have the authority to do?

Patterson-no, you're not. The way that section is articulated by most municipalities is present here, which is asking to align a durational aspect.

The Policy Discussion on Section 7.5 Nonconforming Uses and Structures ended.

Cram-we have had some trouble with the notice for the August 15, 2023, meeting and I am wondering if you are available for a special meeting on August 22, 2023?

Dloski, Dolton, and Wahl are available, which does constitute a quorum for voting.

9. Citizen Comments

Jennifer Coleman 10800 Peninsula Drive- I appreciate the conversation here tonight. How are the words "intensity" and "use" being used? When I hear the word use I think is it residential, a business or agricultural? That is my framework. There are different definitions of intensity, and this word needs to be clarified. I think about traffic increases and density. I do not think of intensity when someone puts an addition on their house, unless they are going to have 10 more people live there or they are changing how it is being used. I want to make sure we are using common sense when we talk about residential structures. As we get clearer about what the intent is, how do we apply those standards to recent changes in use. I look at houses that are clearly commercial. How do we as a community address those boo-boos, which have occurred? Is there a mechanism to change that or is this grandfathered as long as it was used this way?

Cram-for someone to have a legally non-conforming use, the use would have to exist prior

to the adoption of the zoning ordinance in 1972 and continued to be used in that manner currently. If something has changed the use of a structure in the last year that you believe is a commercial use in a residential structure, you can come in and talk to planning and zoning because if this is the case, this could constitute a violation that we can address. We do not want this to go on for many, many years, especially if it has negative impacts to neighbors.

Dolton-if a variance was granted for a particular use, and that use has continued, the variance runs with the property, correct?

Cram-that is correct.

Dolton-it can be difficult to stop a use if it was granted by variance at one point in time or was permitted without coming before the ZBA.

Cram-if there is a machine shop being used in a residential district, this needs to be brought to our attention and we can do the research. Was that use granted by a variance in 1980 and continued to be used in that manner or did it exist prior to our zoning ordinance in 1972.

Coleman-consistency and common sense in these issues is vital. So, if I have a farmhouse with an unattached garage, and I want to build a corridor between the two so my 80-year-old mom can get from the car to the house without falling on the ice, this seems to be an issue of safety. Thank you.

Dolton: how does the Americans with Disabilities Act (ADA) impact our decisions on a dimensional variance, where they need to expand to get a wheelchair out or something like that? Do we have discretion?

Patterson-yes, this works in 2 ways. You are going to get documentation, so the federal law requirements are satisfied and whether it is a reasonable accommodation. That is the standard you are going to use based upon the facts the applicant presents. The determination you make needs to be consistent with that practical difficulty of the dimensional variance. Is the request to vary the dimensional standard or is it necessary for a workplace? Is this a reasonable accommodation to change a side yard setback?

Dolton-one of things we do not generally do is tell someone how to structure the interior of their home. We do not care if there are 2 bedrooms and an office or 3 bedrooms. We are looking at the dimensional issue and lot coverage, for example. If someone comes to us that has had a recent injury or we need to remodel the bathroom because we need to accommodate a wheelchair and the space is not big enough, so we need to add an addition to our home. One of the potential items we can look at is this a reasonable request. Could they change the interior of the home to accommodate this larger bathroom without needing to push the house out or is that an unreasonable request?

Patterson-you need to look at the finding of facts. Your 4 standards for practical difficulty would probably suffice.

Nancy R. Heller 3091 Bluewater Road-I have some real concerns. This does not have anything to do with the zoning board of appeals, but the procedure. The citizens need to be educated and communicated with. They do not have a clue that the ordinance is the holy grail. I look at the invoice list of the township board monthly and money is going to defend lawsuit after lawsuit. I have lived in this township for 53 years. I heard interpretations here I

have never heard of until tonight. I have not heard of these and that is normal in that I have never had an application that applied to it. I am, however, thinking of someone who might have, and your average resident of this township does not have a clue. It is not in my back yard. No one is concerned until it personally affects them. How as a township can we communicate and educate them on the importance of the ordinance, the importance of individual applications, and stating there are consequences; you have time limits. It is the individual's responsibility to educate themselves. In truth, how many of us are 100% educated. You might miss something or misinterpret something. I think we are losing our sense of community because enforcement isn't taking place. People were not aware of the limitations and there are limitations. You have a new ZBA board member coming in and I would be very conscientious in how you interpret your decisions.

Dolton- I would like to compliment the newsletter, which over the past years has become a much more robust, transparent document than it used to be. That would be an excellent space to have a standing place about the ordinance, the importance of the ordinance, and the need to talk to the township if you are contemplating doing anything to your property or buying a property. Don't rely on a realtor to gain knowledge of the property's past. If the community does not like the ordinance, which is a living document, there are ways to change it. We like to keep our personal viewpoints of the ordinance out of our decisions. That is not our role.

Heller- I call the newsletter the newspaper as it has become so incorporated with other information on the first page. People are busy and maybe they do not have time to read the entire newsletter and if people have time, they will. There is such disenchantment out there. We are living in a world if I don't get my way, I am going to sue. I have lived through many different town boards and zoning board of appeals and each change has brought different interpretations. I think we need to keep this in mind, I do not know what the answer is. I know as a human, if I do not get my way, then I am going to look at other sources.

Kim Coleman 6899 Peninsula Drive- I was born and raised here in the house my mother still lives in here on the peninsula. My father recently passed, and he served on this board back in the 70s and 80s. My husband and I purchased our home approximately 12 years ago. It was built in the 50s with very few updates. It is a cottage as described. It has served us quite well as a seasonal home and cottage, but now as we move into another stage of our lives, which includes grandchildren and supporting an aging parent, our needs have changed. I think the discussion here is very relevant to our situation and we will be coming before you hopefully within the next month. I am going to share a letter from my husband, who could not be here tonight. (See the letter at the end of minutes to become part of the public record).

Cram- just for a point of clarification, this discussion was scheduled with a regular meeting of the ZBA in July. The business item scheduled was withdrawn because they had issues and the meeting was cancelled. It is important we have this meeting and the ZBA can call a special meeting when necessary. I know the announcement of this meeting was posted well in advance of the 18 hours. This notice went out in an email blast and was posted on the website.

Peninsula Township
Zoning Board of Appeals
August 1, 2023 7:00 p.m.
Lola Jackson Recording Secretary
MINUTES

Jennifer Coleman- regarding community, let's make sure we are both working toward the same intent to resolve any issues. I've worked on public boards, and I have worked on school boards, and I understand the noticing process and it is very important to meet engagement and not just to meet the letter of the law when we call a meeting. I can call a meeting with 18-hour notice, but is that the outcome I want? Perhaps if I want participation, 18 hours is not going to do it.

Cram-any changes to the zoning ordinance will have plenty of public notice. This would have to go before the planning commission and the township board. There would be public discussion at all those meetings.

Heller-again communicate and educate. All Jennifer would have had to do was go on the website. Why aren't people using the website; this is a person's responsibility. I had to look at individual driver's licenses for several years. People would come in with these expired driver's licenses and felt it was my responsibility and the state's responsibility to remind them; it was not my job to tell them their driver's license had expired. We as residents have lost the sense of responsibility. We need to inform ourselves.

Dolton-perhaps the special meetings can appear on the first page of the website?

Wahl-I have been a member of this board for over 2 years, and this is the first time we have had a discussion like this.

Cram-we will have more discussions regarding policy, but they cannot occur at a regular meeting where we have a case. We just don't have the time there.

10. **Board Comments** None

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

Approved by Consensus

Adjournment at 8:37 p.m.