

# PENINSULA TOWNSHIP

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## **PENINSULA TOWNSHIP ZONING BOARD OF APPEALS SPECIAL MEETING AGENDA**

August 1, 2023

7:00 p.m.

1. Call to Order
2. Pledge
3. Roll Call
4. Approval of Agenda
5. Conflict of Interest
6. Brief Citizen Comments – (for items not on the Agenda)
7. Business:
  - a. Approval of Minutes from the May 16, 2023, Regular Meeting
8. Reports and Updates:
  - a. Policy Discussion Non-conforming Uses and Structures
9. Citizen Comments
10. Board Comments
11. Adjournment

Peninsula Township has several portable hearing devices available for audience members. If you would like to use one, please ask the clerk @ 231-223-7321 or [clerk@peninsulatownship.com](mailto:clerk@peninsulatownship.com).



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Jenn Cram, Director of Planning & Zoning

Posted: July 27, 2023, 12:00 p.m.

# Minutes

Peninsula Township  
Zoning Board of Appeals  
May 16, 2023, 7:00 p.m.  
Lola Jackson Recording Secretary  
DRAFT MINUTES

**PENINSULA TOWNSHIP  
REGULAR MEETING  
ZONING BOARD OF APPEALS AGENDA  
13235 Center Rd., Traverse City, MI 49686  
May 16, 2023  
7:00 p.m.**

1. **Call to Order** by Dolton at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Dloski, Elliott, Dolton, Wahl, Ammerman, Cram-Director of Planning and Zoning, via zoom attorney Witte.
4. **Approval of Agenda** Dloski moved to approve the 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. Public Hearing for Request No. 903, Zoning = R-1A- Rural and Hillside**

Applicant: John C. Ansted Sr. Trust, 10215 Peninsula Drive, Traverse City, MI 49686

Owner: John C. Ansted Sr. Trust, 10215 Peninsula Drive, Traverse City, MI 49686

Property Address: Kroupa Road, Traverse City, MI 49686

1. Requesting a variance from Section 6.8 to construct a single-family residence with an attached garage 50 feet from the ordinary high-water mark, where 60 feet is required.
2. Requesting a variance from Section 6.8 to construct a single-family residence with an attached garage 15-feet from the rear property line, where 30-feet is required.
3. Requesting a variance from Section 7.4.7(A)(1) and (2) to construct a single-family residence with an attached garage 6-feet from the edge of a delineated wetland, where 25-feet is required.
4. Requesting a variance from Section 7.4.7(A) (1) and (2) to construct a driveway through a wetland.

Parcel Code # 28-11-108-001-02

**Cram:** these variance requests came before the Zoning Board of Appeals on September 20, 2022. The board requested additional information and tabled the discussion. The applicant has provided additional information and is here tonight. Cram discussed the staff report and the purpose of setbacks.

**Elliott:** just to be clear EGLE issued the permit, but this work must be approved by the township.

**Cram:** yes, this is found on the EGLE permit under items G and V. The township zoning ordinance applies here.

**Dolton:** requests the applicant to make his presentation.

**John Ansted** 10215 Peninsula Drive: before we purchased the property, we knew there were wetlands

and we also knew there were uplands. In discussing this with the township, the 25- foot setback never came up. The property sat for a long time because the upper east area was so wet. We planned and decided to pursue it as we did not need a big house; we needed a small house for my son and his family. The first thing we did was get delineation. Cram has the wrong date there, but I am not going to criticize her because this is not that important. We purchased the property in October of 2020, and it was in December or January we did the delineation. This was done by Chris Groble from Michigan State. After the delineation, we felt we had adequate space to build a house and possibly build a garage. I know the township limits are 35 feet in elevation so even if you had a walkout basement; you could go up 3 stories. The house footprint is 1,320 feet. Kroupa road is terribly abused and is torn up especially in April, May, and June. There are two unnamed creeks and who knows what artesian wells we are going to run into. That is why we are building to the west. This is the best way to avoid destroying the upland portion of the property. There are hardwoods on the east side and if we took those out it would create more exposure to erosion. We talked to Brent Wheat and of course we had professionals come in and review the property and they concluded we were on the right track. Jesse Mitchell, who is a surveyor and home advisor, will continue.

**Jesse Mitchell** 3356 Jackson Road, Kingsley: Cram did a great job in explaining the request and it was probably good you tabled this application to give the applicant more time to get additional documentation to you. I would like to backtrack to the timeline. Mr. Ansted purchased the property in 2020, with knowledge there were wetlands. He went through the process to obtain an EGLE permit. When the permit was being applied for, EGLE notified the township, and presented the plan to the township. The township is supposed to weigh in if they have any objections. This is all under state law. There is a waiting period with the publication and no one in the township objected. EGLE, following state and federal law issued a permit. Mr. Ansted was required to get a road commission permit for the driveway, which was approved. He was also required to get a soil and erosion permit from the county, which the county reviewed and issued a permit. What was not in the staff report was Mr. Ansted applied for a storm water permit from the township showing the driveway, which was essentially on the wetland boundary and the township approved that permit. There was never any mention of a setback. What I think this setback was for, if you read the amendment, was for development. It talks about planning boards and condominiums and open space. If you look at the published schedule for regulations, the current township website has no mention of wetland setbacks.

I personally believe this was never intended to be applicable to single-family homes. That ordinance is likely meant to apply to planning commission developments requested on behalf of the developer. In the 90's there were many townships that created a wetland setback for a single-family home for an individual and this became common. The county civil erosion office also had a 25-foot setback on the books. After several legal battles where this issue got to circuit and appellate courts, townships in the county removed the setback from the ordinances. An attorney general's report stated because of the way wetlands vary from year-to-year and because of the hydrology of Northern Michigan and after several different lawsuits the setbacks were removed. At the county soil erosion office now, there are no 25-foot setbacks; this is now a suggestion. Similarly, I believe this ordinance is suggesting if you read the amendment, the ordinance is contradicting itself on the setback in a wetland. It states you cannot impact on or place something in a wetland without a permit. How could you place something in a wetland and have a 25-foot setback? I believe this was for something else and should be clarified as to whether this amendment applies to developments only or all land use permits. Typically, the zoning board of appeals will clarify these things if they are poorly written. What happened is these permits

have been issued by the township. The township has had ample opportunity to deny these permits previously written, but now suddenly Mr. Ansted is being told he has a 25-foot setback on a single-family dwelling for what is not legal or correct. The board should issue him the variance he has requested on the setback on the wetlands while the township takes the time to correct the ordinance and clarify if these supplemental development standards apply to all permits or are these just suggestions for a planning commission. Four or five professionals have viewed the property and think building the house on the upper portion of the property, which contains heavy soil, would be a detriment to the area. There would be ongoing erosion issues. If you look at Kroupa Road, it is constantly eroding. This road would need to be built back up and install something like a french drain to get the ground water into the ground instead of on the surface. When you dig into an area with high ground water, you create a creek. The water will flow on top of the ground and then onto the road. This is very detrimental to the foundation of a house. If you are dealing with a road less stable the road moves unlike a house, the road is destroyed by ground water and freezing and this happens every year. Mr. Ansted has no problem installing this driveway so it can hold EMS vehicles. These driveways are routinely installed so they can handle concrete trucks, which weigh more than a firetruck. The high-water setback request from 60 down to 50-feet is a reasonable to construct a house and garage. Are there any technical questions I can answer?

**Dolton:** you are raising an interesting question and a bit of a conundrum which it is within the zoning board of appeals purview to interpret the ordinance. You are asking for a single-family home to be excluded from the wetland requirement if I am understanding you correctly. We could do that, and it would require this board to table the request because an opinion on the ordinance requires much research on our part. We could not do this on the fly. An initial review of this certainly appears to me to apply to residential property. The ordinance contains specific language that a single-family home cannot be built in a wetland. If you want a different interpretation, we will do the appropriate research. We could not evaluate your current application.

**Mitchell:** this is not what the applicant wants. He wants this to move forward, based on its merits.

**Dloski:** in your report dated March 14, 2023, I don't read your conclusions to say the east portion of the property is unbuildable because of high water; you just need to take certain precautions to build above the water table. Am I correct?

**Mitchell:** every area on the earth is essentially buildable. If someone says it is not buildable, that is really not reality. You may have to do special things to handle soil that does not have as much load bearing capacity. If you test sand, you will get a load bearing capacity of 5,000 pounds per square foot. If you test soil on the east side of the property it might be 1,000 pounds per square foot of load bearing. The east side of the property is technically buildable, but it is not the best thing for the property.

**Cram:** in your report, in the second paragraph near the bottom, you note there are 2 seasonal streams that were located. One of those streams is very evident from the site visit today and runs along Kroupa Road and the second seasonal stream is located at the point where the wetlands drain into west bay. Wouldn't there be more potential for erosion, as was indicated in the Watershed Center's letter, with the bluff closer to the water and closer to the ordinary high water mark to cause an issue?

**Mitchell:** the way to avoid erosion is to have dry soil on top. The more separation you have from the water table to your finished grade. If you look at the bank down there, you will see the bank does not have much vegetation on it, but there is no erosion, where those trees are and because it is sand. There the water is not moving the dirt. The second stream is just south about 30-40 feet of where the garage is proposed. It would be the outlet of where the wetland drains out, which is one of the reasons EGLE

preferred the sight line when it was furnished because it avoids contact with both of those streams.

**Cram:** I don't know if EGLE preferred either location. EGLE issued a permit to build a driveway.

**Mitchell:** if you are familiar with the process EGLE looks at all of the alternatives and spends months studying the property. They looked at the driveway alternatives and what would be in the public's interests. It would be good to have a conversation with Joshua about procedures and the health department will tell you if EGLE issues a permit for a septic tank in a wetland, the health department will 100% pass the issue because EGLE overrides wetland jurisdiction.

**Cram:** it is very clear EGLE regulates the wetlands.

**Dloski:** to construct this proposed driveway and to stabilize it so you can get government equipment and fire trucks, you are going to need to cut and fill.

**Mitchell:** essentially.

**Dloski:** so, where you are cutting, you would be cutting into the groundwater.

**Mitchell:** for a driveway you install a French drain until you can offload the water to an area with filtration and you are going to have to do this for the entire length of this driveway.

**Dloski:** what if you used the higher property to the southeast?

**Mitchell:** you would want to install a French drain under the driveway.

**Elliott:** in talking about the ground water levels, it is your contention that the lower site is better ? It does not specify where the water table is on the upper portion, it says 3.5 feet and on the lower portion it says 3 feet; so you are saying that the difference is significant enough? As an engineer is this enough to compel you to avoid building where the water table is higher?

**Mitchell:** If you look at the seasonal ground water, it is actually only 8 inches deep. What you are looking at on the map is a mark where they intercepted a solid clay layer at 3.5 feet. This is not ground water. The groundwater was discovered at 8 inches. It was basically all the way to the surface, which shocked me. I figured it would perk up there. In the lower portion the groundwater is about 4 feet deep, which is right where the sand is. There is not a big buildup of water.

**Elliott:** in regard to the second stream, there were not any flags on the beach level.

**Mitchell:** it is close to where the house was proposed, I think of it as a triangle. At the bottom of the triangle is a dry seasonal stream. Many times, there is no water.

**Elliott:** there is a big fallen tree that must have come down during the last high water event several years ago.

**Mitchell:** the second stream comes in between the proposed house and Kroupa Road

**Ammerman:** my question is where does the stream lie next to the proposed driveway?

**Mitchell:** about 50 feet.

**Ammerman:** if you had to come up with a more compelling explanation from the last time this came before the board, would you say the elevated building site suitability?

**Mitchell:** I would say it is the soil situation on the upper portion of the property with its heavier soils and associated problems versus the bottom portion that is very sandy and you could elevate the foundation to have sandy soil all around the house and garage you could install this driveway and pretty much keep the trees on the property. If someone was forced to build a house on the top of the hill because they were forced to, you are going to have to cut all the trees down to end up with a view property. I would really lean on the soils reports. These show the ground water levels on the property. No one from the township, after issuing these permits, has said anything about building and a storm water permit was issued.

**Cram:** the storm water permit has expired and I would say it was issued in error.

**Mitchell:** that begs the question, why are we even here?

**Wahl:** he needs 2 setbacks for the house and it comes down to whether there alternatives and the alternative is building on the southeast corner that does not require any variances.

**Elliott:** how are you going to get the septic pumped up to the easement on the east?

**Mitchell:** the EGLE permit mandated to be installed as a two- inch directional line.

**Dolton:** so, where is the drain field?

**Mitchell:** the drain field is off-site to the east.

**Cram:** so, they are going to use the same easement.

**Mitchell:** if they build on the west side of the property the drain field has to go to the east side because the property does not perk. You use an underground robot to drill a line to get over there.

**Dolton:** the proposed elevation is the lower elevation

**Mitchell:** no, the septic is actually at the higher elevation; there was nowhere else suitable on the property for a drain field. No matter where you place this, you have to have a holding tank and then a pump tank with a directional drilled sewer line to an off-site drain field. This would go under the driveway and has to be 6 feet deep. You are not trenching this in, but drilling and this creates no impact.

**Dolton:** so, what was the value of the septic easement on the adjoining property?

**Elliott:** my understanding is the easement was done in 2011 and the parcel was created in 2012.

**Dolton:** the engineer report does help clarify our previous discussion about why the driveway can't just come from the lower portion of Kroupa Road which would reduce the area through the wetlands. The presence of the streams makes this approach less desirable from Kroupa. The site Mr. Ansted proposed cutting through the middle is a better choice.

**Cram:** the township ordinance does limit the removal of trees within 200 feet of the shoreline. You could not just clear cut. You would need a permit, and this would state how many trees can be removed. We would also look very closely at a structure being 200 from the shoreline as well. Issuance of a land use permit will require a survey of all of the trees and only 30% would be allowed to be cut.

**Dolton:** Thank you for your presentation. Is there anyone who wishes to speak in favor of this application? Hearing and seeing no one, is there anyone who wishes to speak against this application?

**Susie Shipman 14735 Shipman Road:** I am not in favor of granting variances of this nature generally, but looking at the specifics of this case, I really appreciate the discussion you are having about alternatives. Everything we have received from the resident feedback and everything we have written about in the master plan process tells us the residents of this community are protective of wetlands and the shoreline. There are reasons we need to protect these areas and not allow excessive incursions to take place in those areas, not least of which is the ordinary high-water mark. The high water we had, and the incredible hardening of our shoreline has further degraded the ability of our shorelines to withstand future high water events. This is the wrong way to go. We should be sticking to our guns. There is a reason the ordinance was updated to include protection of wetlands. The Watershed Center references this. This is not an ancient ordinance that needs correcting. Alternatives are the way to go. Protecting our shoreline and vegetation is another item discussed in the master planning process. We have public input on this which shows this is incredibly important to the residents. This would also apply to wetland regulations that would not allow a clear cut for a view.

**Dolton:** if there is no further discussion, I will close the public meeting and bring it back to the board to start deliberations. Each request is measured on its own merit and all 6 conditions must be met for a variance to be approved.

**Wahl:** can we have more board discussion?

**Dolton:** yes, we can also have discussion before we vote on each of the 6 conditions. We will vote on all of the 4 variance requests, and I think we should start with the wetland requests.

**Wahl:** if you have an EGLE permit, do you need to make an adjustment as in this case?

Dolton and Cram do not know and ask the applicant.

**Mitchell:** normally minor adjustments are made with an addendum by email. As long as they are minor adjustments.

**Dloski:** quite frankly, I am against all 4 variances. The property is buildable without any variances on the east side of the property with a small driveway. The idea here is to get as close as possible to the water. This is not a reason to give a variance.

**Ammerman:** I am going to vote no to all 4 requests. As Ms. Shipman has stated, we need to protect the wetlands. Wetlands are needed for water filtration and ground water recharge. I agree we start with the wetland requests. I am not supportive of the traversing the wetlands with a road.

**Wahl:** I agree this is not the time to be discussing the merits of 7.4.7. The applicant has stated he wants to seek approval of the variances as stated.

**Elliott:** I am opposed to all 4 and I am going to read from the applicant's application Item A "Also it would be more advantageous to avoid building immediately adjacent to the wetlands thereby avoiding draining and changing the hydrology of the wetlands". This was confusing to me as this was the reason given for building lower rather than higher on the property. I perceive this giving a reason to not build adjacent to the wetland. It is stated in Item C "we do not want to change the biology of the wetlands". We could avoid this if there was another alternative buildable site, which there is in this case.

**Dolton:** back in August 2022 the applicant was adamant the east corner of the property was unbuildable; we wanted to give Mr. Ansted an opportunity to provide in some scientific manner information that demonstrates the east portion of the property is unbuildable. The southeast corner of the property has enough square footage to build the house he is requesting. It would be a heavy lift to approve all 4 of these variance requests when there is an alternative requiring no variances. I need a motion to begin deliberations on Variance Request 3.

**Wahl:** I move the board consider variance request 3, which states (3. Requesting a variance from Section 7.4.7(A)(1) and (2) to construct a single-family residence with an attached garage 6-feet from the edge of a delineated wetland, where 25-feet is required with a second by Elliott.

**Approved by consensus**

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

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.

No: Elliott-the property is not unique to our peninsula shoreline. The applicant stated in Item A "Also it would be more advantageous to avoid building immediately adjacent to the wetlands thereby avoiding draining and changing the hydrology of the wetlands".

No: Wahl-the difficulty here is the location as opposed to alternative buildable site on the southeast side. I think part of this is personal and a beautiful view of the water is desired. I don't believe there is any undue hardship requiring the applicant building in the alternative location.



No: Ammerman- the east side of the lot is buildable, and I do not consider the wetlands a unique circumstance. Buying a plot of land with a preponderance of wetlands, there are requirements for setbacks of the wetlands. Calling this a unique circumstance for the purpose of seeking relief from the ordinances is illogical.

No: Dloski-my answer is going to be no for all of the reasons stated. The property can be developed for a single-family residence without a variance, so none of these conditions apply.

No: Dolton- I concur with all the rational stated. There is a buildable site that does not require variance approvals.

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

No: Wahl- there is no evidence the prior property owners have done anything to the site. It looks like the previous property owner had a plan showing a buildable site on the east side of the property.

No: Elliott- this is a tricky one for me as he has taken no action other than requesting a variance.

Yes: Dolton-my interpretation of this basic condition is Mr. Ansted or previous property owners have not altered the property. The need for the variance is not a result of his actions. The mere fact that he is asking for a variance would establish a standard that would disqualify every variance request.

(Elliott changes her vote to Yes after hearing Dolton's explanation)

Cram asks attorney if it is okay for Marilyn (Elliott) to change her vote after she heard what one of the other ZBA members said. Witte replies this is fine as deliberations and discussions are still ongoing.

No: Ammerman- the variance request is the result of the property owner's interest in changing the setbacks that are required, which includes building a driveway through a wetland.

No: Dloski- for the reasons stated by Ashley (Wahl) and Will (Ammerman).

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.)

No: Elliott- there was a building site identified in 2018.

No: Ammerman- building the improvements on the east side of the lot would not be unnecessarily burdensome.

No: Dloski- the condition has not been met. As indicated before, the hydrology and geological survey shows the property may be developed on the east side. There may be some additional expenses for dewatering, but that is not unusual.

No: Dolton- there is a buildable site on the southeast corner. Strict compliance would not prevent the owner from using the property for intended purposes.

No: Wahl- for reasons that have been stated.

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.

No: Dolton- the variances will not bring substantial justice to other properties in the district.  
No: Elliott- crossing a wetland will not do substantial justice for the applicant or other property owners.  
No: Dloski- no for reasons already stated by John (Dolton) and Ashley (Wahl).  
No: Wahl: for reasons already stated.  
No: Ammerman- for reasons already stated.

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

No: Wahl- the same reason as noted for D. You are disrupting a wetland. There are homes in the area and there is also Lake Michigan. This will have an adverse impact.  
No: Dolton- there has not been a lot of science around this particular issue; so in regards to this application there is not a way to know about the adverse impacts might be.  
No: Ammerman- for the reasons already stated.  
No: Elliott- for the reasons previously stated.  
No: Dloski.

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.

Yes: Elliott- the variance request is not changing how the property is zoned.  
No: Ammerman- my vote is to be consistent with my previous votes. Encroaching on the wetlands is not a permitted right.  
Yes: Dloski- a single-family residence is a permitted use by right.  
Yes: Wahl- this property is zoned R1A and is not changing the permitted use by right.  
Yes: Dolton- this is a residential property. The residential use is not changing.

Conditions A through E failed. Condition F passed. In order for a variance to be granted all 6 of the conditions must be met.

**Wahl made a motion to deny request #3, which is the request for a variance from Section 7.4.7(A)(1) and (2) to construct a single-family residence with an attached garage 6-feet from the edge of a delineated wetland, where 25-feet is required with a second by Dloski.**  
**Roll call vote: Yes-Elliott, Wahl, Dolton, Ammerman, and Dloski.**  
**Request 3 is denied.**

**Wahl moved to evaluate request #4, which reads (4. Requesting a variance from Section 7.4.7(A) (1) and (2) to construct a driveway through a wetland with a second by Elliott.**

**Approved by consensus.**

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

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.

No: Dolton- there is a viable building spot on the southeast corner of the property.

No: Dloski- the driveway would go through a wetland all the way to the lake. There is a viable building location in the southeast corner

No: Ammerman.

No: Wahl- going through the wetlands is unnecessary because there is a buildable spot in another location.

No: Elliott: for the reasons stated previously.

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

Yes: Dolton – for reasons stated under request #3.

Yes: Elliott – to be consistent with response to request #3.

No: Wahl- in this situation there is an alternative. The reason stated for needing this variance is because of wanting to build a house in a certain place that requires a variance.

No: Ammerman- for reasons already stated.

No: Dloski- it is the applicant's desire to be on the water and it is driving this entire variance request.

Ansted asks Dloski if he is a structural engineer or a hydrologist.

Dolton asked if Ansted wanted to address the board.

Ansted leaves the meeting at 8:20 p.m. stating "he will see you in civil court"

Cram continues.

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.)

No: Dolton- there is a buildable site on the southeast corner. Strict compliance would not prevent the owner from using the property for intended purposes.

No: Dloski- there is a building site on the property which would not require any variances.

No-Elliott- there was a building site identified in 2018.

No: Wahl-there is an alternative building site, and I would like to reiterate even the applicant's presenter, the engineer, indicated that is a location which is buildable. This is not unnecessarily burdensome and there is an alternative on the southeast side of the property where a variance would not be required.

No: Ammerman- for all of the four said stated reasons.

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.

No: Dloski- no for reasons already stated

No: Dolton- this is not providing substantial justice to other property owners in the district.  
No: Elliott- there is a sizeable disturbance to the wetlands and it will not do substantial justice to the applicant or his neighbors.  
No: Wahl: for reasons already stated.  
No: Ammerman- for reasons already stated.

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

No: Wahl- I do not think this will have an adverse effect on property values, but there will be an impact on vegetation and the land. This may create adverse effects on surrounding property and the neighborhood especially because many of the neighbors have shore frontage.  
No: Dloski- for reasons just stated by Wahl (Ashley).  
No: Elliott- there is adverse impacts on the wetlands.  
No:-Ammerman- for the reason stated by Wahl (Ashley).  
No: Dolton- I cannot state for certain that the variances will not cause adverse impacts.

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.

No: Ammerman- my vote is to be consistent with my previous votes. Encroaching on the wetlands is not a permitted right.  
Yes: Dloski- a house is a permitted use by right.  
Yes: Elliott- the variance request is not changing how the property is zoned.  
Yes: Dolton-this is a residential property. The residential use by right is not changing.  
Yes: Wahl- this property is zoned R(1) and is not changing the permitted use by right.

**Dloski made a motion to deny variance request #4 -Requesting a variance from Section 7.4.7(A) (1) and (2) to construct a driveway through a wetland with a second by Elliott.**  
**Roll call vote: Yes-Elliott, Wahl, Dolton, Ammerman, and Dloski.**  
**Request 4 is denied.**

**Witte-** each variance request must be considered, so precede with variance requests 1 and 2.

**Elliott moved to evaluate request #1, which reads 1. Requesting a variance from Section 6.8 to construct a single-family residence with an attached garage 50 feet from the ordinary high-water mark, where 60 feet is required with a second by Ammerman. Approved by consensus**

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

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.

No: Dolton- there is a viable building spot on the southeast corner.  
No: Dloski- for the same reasons articulated by John (Dolton).  
No: Ammerman- for said reasons by me already.  
No: Wahl- for reasons I have already stated for variance requests #3 and #4.  
No: Elliott- not unique and with an alternative site.

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

Yes: Elliott.  
No: Dloski- because the property owner wants to utilize the parcel in a way that does not need to be used as there is a building site on the southeast portion. There was a building site identified in 2018.  
No: Ammerman- for reasons already stated.  
Yes: Dolton- there is no evidence the owner has modified the property.  
No: Wahl- As I have already stated, I do believe this is the action of the property owner because there is an alternative building site on the southeast corner as indicated by his engineer.

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.)

No: Dloski- all the owner needs to do is pull a building permit from the township to build on the property on a site already identified.  
No: Ammerman- an easterly building location is not necessarily a burdensome decision.  
No: Dolton: there is an alternative where compliance could be met.  
No: Wahl- for the reasons already stated on the other 2 variance requests and for reasons just stated.  
No: Elliott- there was an identified building site in 2018 before the purchase of the property.

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.

No: Wahl- I want to focus on the letter from TJ Andrews on behalf of the Watershed Center, which was submitted to the board. She talks about the water's edge setbacks and how setbacks are there for a reason such as a building crumbing into the water and destabilizing vegetation. This is my focus for this request and we have these setbacks for a reason, especially the ordinary high setbacks. This will be bad for the community.

No: Dloski- for reasons already stated.  
No: Ammerman- ordinary high water mark and wetland setbacks are extremely important for the reasons already enumerated.  
No: Elliott- in visiting the site and seeing the high water event that happened a few years ago, it was a graphic illustration of why we have these setbacks.  
No: Dolton- this will not do substantial justice to other property owners in the district.

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

No-Elliott- this can cause adverse impacts because anything you do that close to the water impacts the entire peninsula.

No: Dolton- I cannot comfortably state the variances would not cause adverse impacts.

No: Dloski- I cannot state this would not have an adverse impact and I have to state the owner is talking about saving the wetlands, but he wants to be almost a quarter mile of road through the wetlands and try to have it stabilized.

No: Ammerman- with the recent high water issues, this makes it a no.

No: Wahl- for all the reasons stated and also the attorney TJ Andrews on behalf of the Watershed Center. The focus of the applicant was really the driveway and not the high water mark setback. There was no documentation provided to us regarding the impact of the ordinary high or the vegetation. Without this information, I cannot vote yes on this.

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.

Yes: Dolton- to build a home and garage is a use by right.

Yes: Wahl- this is not changing the permitted use by right.

Yes: Elliott- the residence is a use by right.

Yes: Ammerman- I do see the reasoning.

Yes: Dloski- this is a permitted use by right.

Yes: Wahl- this is not changing the permitted use by right.

**Elliott made a motion to deny variance request #1 ( 1. Requesting a variance from Section 6.8 to construct a single-family residence with an attached garage 50 feet from the ordinary high-water mark, where 60 feet is required with a second by Dloski.**

**Roll call vote: Yes-Elliott, Wahl, Dolton, Ammerman, and Dloski.**

**Request Number #1 is denied.**

**Elliott moved to evaluate request #2, which reads (2. Requesting a variance from Section 6.8 to construct a single-family residence with an attached garage 15-feet from the rear property line, where 30-feet is required with a second by Ammerman. Approved by consensus**

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.

No: Elliott- this is not a unique circumstance and there is a building site identified elsewhere on the property.

No: Dolton- there is a building site on the property which would not require any variances.

No: Ammerman- I just want to point out that the request from the last ZBA hearing was to bring forth a more compelling case and it is worth noting that the applicant's consultant outlined building near the

water would maintain the site in a more natural state. It is worth underlining the supposition the land would be clear cut if an easterly site was used. Trees 200 feet from the shoreline would not be allowed to be cut wholesale and I think we all agree traversing a wetland with a driveway is antithetical. The purpose of this second meeting was to provide more evidence and I did not hear anything in the way of a more compelling case in this hearing.

No: Dloski- for all reasons previously stated

No: Wahl- for reasons I stated regarding variance request #1.

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

No: Wahl- for the same reason I voted no for the last two variances.

Yes: Dolton- there is no evidence of the owner or previous property owners having taken any actions.

No: Dloski- the owner is ignoring an existing site to move to the water. To me this is self-created.

No: Ammerman- for reasons already stated.

Yes: Elliott-I agree with John (Dolton).

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.)

No: Dolton- there is an alternative building site identified by the engineer.

No: Dloski- there is an alternative that is not cost prohibitive otherwise the engineer would have pointed that out in his March 13, 2023 report. Mitchell said there would need to be a significant amount of fill needed but he did not say it was impossible from an engineering perspective or even from an economic standpoint. If it was economic this is not something we could consider anyway. I think we can rely on the engineer's report to conclusively feel comfortable there is another building site.

No: Wahl- when a report was sent to the health department, it looks like there was an actual plan for a home on the southeast corner.

No: Elliott- for the reasons already stated.

No: Ammerman- for the reasons already stated.

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.

No: Ammerman-it is unclear to me the requested variance would not have adverse effects on the adjacent property owners.

No: Elliott.

No: Dloski- this would need to be done right and there is no indication anyone knows what would happen to adjacent property owners.

No: Wahl- the request is from 30 to 15 feet for the rear side setback. In order to put in the garage, you would need to cross the wetland.

No: Dolton- to have all 3 parts-the house, garage, and driveway, could cause adverse impacts to other property owners.

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

No: Dloski- for reasons previously stated.

No: Elliott- for reasons previously stated.

No: Dolton- for the same reasons I stated under requirement D.

No: Wahl- for reasons I gave under requirement D.

No: Ammerman- for the reasons aforementioned.

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.

Yes: Dolton.

Yes: Ammerman-for reasons already stated.

Yes: Dloski- for reasons already stated.

Yes: Elliott- the resident is a use by right.

Yes: Wahl- for reasons already stated

**Elliott moved to deny request #2, which reads (2. Requesting a variance from Section 6.8 to construct a single-family residence with an attached garage 15-feet from the rear property line, where 30-feet is required with a second by Wahl.**

**Roll call vote: Yes-Elliott, Wahl, Dolton, Ammerman, and Dloski.**

**Request Number #2 is denied.**

- 8. Approval of Minutes from April 19, 2023 Regular Meeting Dloski moved do approve the minutes with a second by Elliott.**

**Roll call vote Dloski, Ammerman, Dolton, Wahl, Elliott.**

- 9. Citizen Comments Susie Shipman thanks Cram and the board for taking on this work on behalf of the community and enduring the process.**

**10. Board Comments**

**Elliott:** I am not an engineer, nor a hydrologist, although I am the daughter of a hydrologist and a Latin scholar mother. I learned from him several things about water and how it works. It does not matter if you're 4, it does not matter if you are 50, water has certain properties and there are natural laws. You do not need to be an engineer to look at something and understand how water is going to work. I am not saying I took umbrage with the statements you are not an engineer or a hydrologist; my job here is as a ZBA board member. I think we are all imminently qualified, sanctioned if you will by my deceased hydrologist, engineer to make these determinations.



Peninsula Township  
Zoning Board of Appeals  
May 16, 2023, 7:00 p.m.  
Lola Jackson Recording Secretary  
DRAFT MINUTES

**Wahl:** I agree. You cannot come before the board stating you want to have the least impact on a wetland when you are going to put an extensive driveway through them. Those two ideas seem conflicting to me. As an attorney I have seen a lot of conflicting expert reports.

**Dolton:** I think the applicant made a strong effort to answer the questions we raised at the last meeting. He provided a soils and structures report, which supported his desired perspective, but it did not support the fact the southeast corner was unbuildable.

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

**Approved by consensus.**

Meeting adjourned at 8:56 p.m.

# **Policy Discussion Non-conforming Uses and Structures**

- **Walk through Section 7.5 – Non-conforming Uses and Structures**
- **Review Township Board comments from July 11, 2023 meeting**

proceed with the work, construction, or filling in the flood plain, or a portion thereof.

(e) Compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994, PA 451, as amended.

(6) Vegetated Buffer Protection: All shoreline properties including flood plain areas shall have a vegetated strip inland of the beach area to filter nutrients and storm water and give protection from lake waves. Use of deep rooted shrubs, tree, and native plants provide greater protection than man-made structures.

(7) Retaining Wall or Seawalls: Notwithstanding Section 7.4.3(5), There shall be no retaining walls or seawalls in any flood plain area.

## **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.

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.

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.

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.

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.

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)**

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)**

Section 7.5.7 District Changes: Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of another classification, the provisions of this Section shall also apply to any existing uses or structures that become non-conforming as a result of boundary changes.

Section 7.6 Off-Street Parking and Loading Regulations:

Section 7.6.1 Requirements: There shall be provided in all Districts, at the time of erection or enlargement of any main building or structure, automobile off-street parking space with adequate access to all spaces. The proper number of parking spaces for any given use as specified in this Section are based upon considerations of the maximum number of motor vehicles that can be expected on the premises at the same time during an average day.

- (1) Location of Residential Off-Street Parking spaces may be within a rear yard or side yard. Off-street parking shall not be permitted within a minimum front yard setback unless otherwise provided in this Ordinance.
  - (a) Required residential off-street parking spaces shall consist of parking strip, parking bay, driveway, garage, or combination thereof and shall be located on the premises they are intended to serve.
- (2) Location of Off-Street Parking for Other Than Residential Use: Shall be either on the same lot or within three hundred (300) feet of the building it is intended to serve, measured from the nearest point of the building to the nearest point of the off-street parking lot. Ownership shall be shown on all lots or parcels intended for use as parking by the applicant.
- (3) Joint Use of Off-Street Parking Areas: May be provided collectively by two or more buildings or uses PROVIDED the total number of parking spaces shall not be less than the sum of the requirements of the space requirements computed separately.
  - (a) In the instance of dual function of off-street parking spaces where operating hours or parking needs of individual building or uses occur at distinctly different times, the Board of Appeals may grant an exception.
- (4) Fractional Spaces: When units of measurement determining the number of required parking spaces result in a fractional space, any fraction up to and including one-half ( $\frac{1}{2}$ ) shall be disregarded and fractions over one-half ( $\frac{1}{2}$ ) shall require one (1) parking space.
- (5) In Cases of Uses Not Specifically Mentioned: The requirements of off-street parking spaces shall be in accord with the use which the Zoning Administrator considers is similar in type.
- (6) Use of Off-Street Parking Areas shall prohibit commercial repair work, storage of merchandise, or servicing or selling of trucks or motor vehicles.

# PENINSULA TOWNSHIP

13235 Center Road, Traverse City  
MI 49686

[www.peninsulatownship.com](http://www.peninsulatownship.com)

## Township Board Regular Meeting

July 11, 2023, 7:00 p.m.

### Township Hall

### Minutes

1. **Call to Order** by Wunsch at 7:00 p.m.
2. **Pledge**
3. **Roll Call**

Present: Wunsch, Achorn, Sanger, Rudolph, Shanafelt, Chown

Absent: Wahl

4. **Citizen Comments:**

**Erin Hafeli, 13387 Blue Shore Drive:** I recently purchased the farm at 2150 Carroll Road. I'm here to voice support for leniency and relief on enforcement for u-pick directional signs. Working to gather a following of people, I've had a lot of support from neighbors sending customers down. Days where I don't have a sign down there, when I'm in the shop alone, it's a dead-end street. There are trees obscuring the roadside. I'm continuing to work on social media efforts and other type of directional efforts, but the u-pick sign makes a significant impact to my business. I would like to be able to have that up temporarily during harvest season. Thank you.

**Louis Santucci, 12602 Center Road:** I also want to support the Isaiah Wunsch change in the ordinance. I think it's time to get the sign ordinances changed. Instead of trying to figure out a way to accommodate Isaiah's situation, you oughta scrap the sign ordinance for the entire time that we are all farming. It doesn't make sense to try to pick out one little exception, that being a vintage truck. I've got a vintage tractor. Can I put a vintage tractor out there? Why not? What's the big deal with the vintage truck? I think you're just going to dig yourself a hole, so why not get rid of the sign ordinance for harvest time, say from May to November? We're getting back to the old issue. Any ordinance ought to be based on whether it's protecting the health and welfare of the community. I don't see anything in the sign ordinance that justifies the sign ordinance based on any of those zoning provisions. You might argue it's safety because people might be driving down the road and would have to slow down to read the sign and it might cause an accident. In that case, take all the signs off Center Road. My suggestion is, get rid of the sign ordinance for that period of time that those of us have pick-your-own signs and farm markets. Otherwise, you are going to get a bunch of us who have antique tractors or other modes of what we use on the farm, maybe a big reaper or something.

**Mark Santucci, 11789 Center Road:** I'd like to give a thank you to David Sanger. He sent a note to me back in the springtime telling me what had happened to my hoop house. That is the way you work with your neighbors and your citizens. He gave me the opportunity to

turn a public group down, particularly with a name like a patriot run, but I believe it's the wrong time for the township. Pulling it off is a far greater task than we have time and resources available for.

**Chown:** I agree with both of you. It's very hard to say "No" when there's such enthusiasm and an interesting character like Stan [Cottrell]. The motivations are above reproach, but the only way I would consider this race is if we change the route. I'm not inclined to support it as the course exists. I'm sorry to say no but very inclined to say no at this time.

**Achorn:** last month, we discussed looking at alternative roads that were not heavily trafficked, that would not impede tractors and other vehicles. Right now, we don't know what that possibility would be. It's premature for us to take up valuable time when the basics have not been determined. Maybe another year. After all this has been ironed out and vetted, then I think we could look at it.

**Shanafelt:** I have the same reaction. It's too soon and too much to handle as we move into September. Maybe next year would be more appropriate. We need to consider whether we do large events on the peninsula. Your point [Rudy] about national attention is well taken. With the triathlon stepping out, I don't know if we want to have a third race come back in. We need to understand what the appetite is. I think the September timeframe for agriculture makes that a non-starter. The potential hazards are a real problem.

**Wunsch:** sounds like the consensus of the board is not to move forward with the Freedom Run this year but perhaps continue the discussion and look at an application for next year.

**Cram:** it is on our radar to look at the large event ordinance. That would involve community input and possibly amending the ordinance. Next year we could entertain an application. There is a representative from the Freedom Run here. [They] have heard what you've said. I'll follow up with Mary Panek and let her know your thoughtful response. I appreciate your time and energy for considering this. We'll continue to move forward to make positive improvements for this community.

5. Policy discussion on non-conforming structures and uses, signage for u-picks and farm stands, and shoreline regulations and requirements (Cram)

**Cram:** I'm starting with non-conforming uses and structures. Since I have been fulfilling the role as your zoning administrator, it has come to my attention that land use permits have been issued that have allowed the expansion of non-conforming uses and structures. Some of them are more egregious than others. We continue to work through the issues that issuance of those land use permits has caused. This area is something the zoning board of appeals [ZBA] struggles with. It is the ZBA's responsibility to interpret our zoning ordinance. I would like to know from the board as the legislative body the outcome you would like to see as we deal with these non-conforming uses and structures. Then I can help guide the ZBA. I will be asking them for their interpretation of these items at their meeting next week. What I hear on the outcomes you want to see and their interpretation will help me determine whether or not amendments to our zoning ordinance are required. I cited the intent and purpose of non-conforming uses and structures, and I highlighted some things for you in the packet.

As a professional planner, and looking at planning in general, in every municipality I've worked with, it's always been the goal to minimize the expansion of non-conforming uses



and structures. Most zoning ordinance land use codes talk about limits and when it's appropriate to expand a non-conforming use or structure, and it's usually for safety and sanitation. Our existing zoning ordinance under intent and purpose makes that very clear. If someone has a structure that is non-conforming with regard to setbacks, they have the ability to do in addition to that non-conforming structure. That addition only requires a land use permit currently as long as the addition meets required setbacks, building height, and all the other dimensional requirements.

Where it gets tricky is when you have a non-conforming structure and in order to address safety or sanitation or the desire of the property owners to improve their residence, they propose additions that don't meet setbacks and other dimensional requirements. That can be on the vertical plane, adding additions that go out within the setbacks, and it can be on the horizontal plane by going up.

With some of the land use permits that have been issued, I have seen non-conforming cottages with the roofs removed, adding additional floor area that makes it a more attractive structure, more functional or contemporary, but not based on safety or sanitation.

There's a cottage where the existing stairway is a spiral staircase. That doesn't meet the current building code. In order to put in the proper stairway to connect the main level with the lower level, they need additional room in order to get that stairway. Or if somebody has special needs, they may need to expand their bathroom to make a wheelchair work. We want to allow the community to expand these non-conforming structures reasonably, but we need some guidelines. Is the outcome you want the expansion of non-conforming structures, going up and going out beyond safety and sanitation needs?

**Sanger:** on several of our waterfront roads, non-conforming structures have been modified. The ones that come to mind are one floor, maybe a marginal walkout basement. The question Jenn is asking is, shall the ZBA approve taking that one-floor cottage, taking the roof off, and adding at least one story and perhaps even a third by the calculation of where base level is? It's a tough decision because the property values are quite high on the water and these structures typically are on the water. The result is a demand for a larger structures to accommodate more people. What we find, on East Shore, Peninsula Drive, and Bluff Road primarily, is that the impact of the higher intensity of use, of more bedrooms and more living space for people, typically results in more space required for vehicles, for occupants and visitors and delivery vehicles. Today it is quite common to have cars parked on these lateral roads in the right-of-way. Delivery vehicles have no place to come up into a driveway, so we have delivery vehicles blocking the roads. Based upon my past experience with both the planning commission and zoning board, I believe it's appropriate for the township board to evaluate this. We had a ZBA case and a court case on a property on Center Road a couple of years ago where it was the issue of intensity of use. An increase in the intensity of use factors into parking, safety, pedestrians, all that comes with placing more people in a compromised structure to begin with.

**Shanafelt:** my view on legal non-conforming is they are non-conforming but happen to be legal because they were there before. Safety, absolutely. I struggle with why you need to increase the horizontal footprint to put in a straight stairway. You need some room size, but that's the way it goes. In my view, the horizontal footprint stays the same, the vertical



footprint stays the same. You can redo the inside. As soon as you meet current zoning standards for setbacks, you can start following our existing zoning requirements.

**Rudolph:** I thought the ordinance was pretty clear. The first issue, 7.5.1: I agree that adding living space increases the intensity of the use. That is clearly not the intent of the ordinance. 7.5.5: I agree conditions must conform to setbacks unless there's a very good reason not to. That would have to go before the ZBA. 7.5.6: I also agree that any replacement must be less non-conforming. That's considering the increased intensity of non-conforming uses, and it's clearly stated in the ordinance the way it is now. If we want to change, I think we have to change the ordinance.

**Cram:** it's very clear. Changing the format of staff reports where we talk about the intent and purpose of our regulations and why we have them and what it means to vary from them will help guide the ZBA. I wanted to hear from you to make sure the zoning ordinance gives us the tools to achieve the outcomes you want to see as our elected officials.

**Achorn:** it's based on precedence. For the last eight years, I've sat on or read everything from the ZBA. The owner's design choices are not a valid reason. There are many ways to change the design of a house and still stay within the parameters of the ordinance. Even in the non-conforming ones, they are still able to work with the architect and obtain close to what they want and obey the ordinance rules.

**Cram:** we're also learning that we need to pay closer attention to our floodplain. We recently updated the new FIRM maps. A lot of these shoreline properties are within the floodplain. We have to work with our building officials to make sure that when improvements are made to non-conforming structures in the floodplain, they meet certain requirements within the construction code so the owners can still apply for flood insurance. There is another level of regulation that we need to be coordinating. Ultimately, if we as the township issue land use permits for improvements in the floodplain, we're responsible.

**Chown:** did we get that new floodplain map up on the website?

**Cram:** yes, there are several maps and several layers. I'll be working with Susan to update the website so there are links to the FEMA website. It's really user friendly. You plug in your address and it will tell you if you're in or out. Nicholas and I are working with EGLE to understand what the different codes are so we can help people navigate the website.

**Sanger:** the other impact of increasing the footprint is increasing impervious surfaces. With more people, you get more concrete, more blacktop, and difficulty in complying with our stormwater control ordinance to keep the water that falls on the property on the property and let it filter out as opposed to rushing into the bay.

**Cram:** switching to shoreline regulations, it has come to my attention that land use permits have not been issued consistently for work along the shoreline. A land use permit is required for any filling, grading, or earth movement within 200 feet of the ordinary high water mark. The zoning administrator does have the ability to reduce the required setback for a seawall from the 60 feet from ordinary high water, but a land use permit is still required. If you look at our floodplain regulations, for a property along the shoreline within the floodplain, structures are limited. No fill should happen in the floodplain because there's a detrimental effect and impacts to neighboring properties if there's a flood.