

Peninsula Township
Zoning Board of Appeals
August 16, 2022 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
August 16, 2022
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, Serocki, Deeren-Director of Zoning, by phone attorney Fahey.
4. **Approval of Agenda** Serocki moved to approve the agenda with a second by Dloski.

Approved by consensus
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None
7. **Business:**

1. Request No. 903, Zoning R-1A

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 Rd., Traverse City, MI 49686

1. Requesting a variance from the required sixty (60) foot setback from the ordinary high water line to a fifty (50) foot setback in order to construct a single family residence w/ an attached garage.

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

Deeren: a survey came in for this request which requires additional variances. This case will be moved to next month on September 20, 2022. The request is to be amended and republished.

Dloski moved to table the request until September 20, 2022 with a second by Serocki.

Approved by consensus.

2. Request No. 904, Zoning A-1

Applicant: Joshua B. & Lesli-Anne D. Humphrey, 1101 Elmer Drive, Traverse City, MI 49686

Owner: Joshua B. & Lesli-Anne D. Humphrey, 1101 Elmer Drive, Traverse City, MI 49686

Property Address: 1101 Elmer Drive, Traverse City, MI 49686

1. Requesting a variance from the required thirty-five (35) foot front yard setback to a thirty-

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three (33) foot front yard setback in order to construct a 38'x30' garage attached by a breezeway.

Parcel Code # 28-11-008-021-55

Joshua Humphrey (J. Humphrey)

Lesli-Anne Humphrey (L. Humphrey)

1101 Elmer Drive

L. Humphrey: we are here tonight to request a breezeway and garage attachment on our primary residence. Six years ago we renovated the house and lessened the non-conformity. We used the original footprint of the house. We have worked with a draftsman who has come up with 3 different renditions to try and get as far east as we could. With the garage and septic we were worried we would have foundational issues pulling more dirt away from the current house due to run off issues.

Deeren: where is the septic located as it is not delineated on your plan?

J. Humphrey: right where the driveway leaves the house, there are two white caps where the drain and cleanout are located.

Dolton: asks for staff report.

Deeren: the house is non-conforming and was improved with porches and decks. The original 23 acres owned by the previous owner and the sub-division to the west is part of the original parcel. The house was built in 1974 prior to the split and was probably right in the middle of the 23 acres.

Dolton: so the split caused the front yard setback and the driveway to be on the easement as opposed to fully on the property.

Dloski: you want to connect the breeze way porch and you do not have a garage now?

L. Humphrey: no, we have never had a garage.

Dloski: so what is the problem with putting the garage where it could be?

J. Humphrey: so the problem with the property is if you go too far east you run into the driveway and there is a pretty heavy slant right there. We actually had to push the garage as far to the east as we could, but then lower it by two feet so we can make an approach to the garage. In talking with our builder and excavator we felt that was going to be too high a grade to actually get into the garage correctly from the front side.

Dloski: it looks like the driveway goes right through the garage.

J. Humphrey: we are abandoning or getting rid of that part of the driveway. We will be approaching the driveway from the front of the house and go around to the actual entrance of the garage. The driveway we have now will go away.

Dloski: you will go around the house on the east and the garage from the east. So what is the problem of moving the garage to make it conform?

J. Humphrey: if you look at the property where the flat level is today for the garage, there is a foot drop on the driver's side. When you get to the other side of the house, it drops significantly back there as well.

L. Humphrey: it would cause the slope to be so significant, it would be unusable. We cannot swing the driveway because of the septic.

Dloski: if you move the garage, it won't connect to the breeze way?

L. Humphrey: no, with the third rendition we had it moving more east and we are still able to connect to the breeze way. The contractor and excavator said the grade would be too high.

Dloski: do you have anything from these contractors to support that?

J. Humphrey: just a verbal communication when we met with them.

Serocki: this garage is 30 by 38, which is an unusual size for a garage. Why do you need such a large garage? If you went down to 28 by 38 you would be well within the guidelines. It seems it would be the easiest thing to do.

J. Humphrey: it would be used for storage, work benches, lawn equipment, and the cars.

Serocki: You have 10 acres and have you thought about putting the garage on the other side of the house or in the back?

J. Humphrey: yes, we did look at the back of the house. There is a very steep grade and this could create erosion and potential foundation issues.

L. Humphrey: the south side of the house is the front of the house and the north side is the back of the house. We cannot do anything to the west of the house as we are so close to the steep grade, so the north east is as far as we can go.

Dolton: a standard three-car garage is anywhere between 31-34 feet by 20-24 feet, so this is a significantly large garage. To Serocki's point, you could shrink the garage by 2 feet and not require a variance. Is there a compelling reason you need this size of a garage and you cannot live without it?

J. Humphrey: we are planning to spend the rest of our lives in this house and we want to make sure we have all the space we need.

L. Humphrey: we are planning on growing our family. We are going to get a riding lawn mower and other equipment and we want to make sure we have the space. We do not want to have sheds or other buildings on the property to store future items. When we bought the property the goal was to try and stay within the original footprint. I'm never moving again. If we could get a tractor in there and begin to do our own snow removal, it would be awesome. So we just want to plan ahead.

Dolton: you mentioned you have reduced some non-conformity. Could you describe those changes?

L. Humphrey: when we originally bought the house, there was a significant decking around the house. We actually took most of the decking out. We had to come for a variance for an overhang on the front porch 6 years ago. To reach as much conformity as possible has been our goal. We do not want to add additional buildings to the property.

Dolton: there is an easement you're no longer going to be needing to utilize, correct? Is that something you are willing to document and give up?

J. Humphrey: once we move the driveway and get the garage built, then we can reduce the easements that are across both of the properties back there. No one has expressed interest in using those easements, but we definitely do not want to hang on to them.

Dolton: the board does look favorably on reducing non-compliance. We have to vote through all of these basic conditions, but if this was a condition of approval to remove those easements,

would this be an acceptable condition for you?

Deeren: I think a portion of the easement is going to have to remain on the southern lot. I know it encroaches on both of those 2 lots.

L. Humphrey: eventually we would like to move the driveway a little bit more. The garage goes in first and then we will be able to figure out the rest moving forward.

Dloski: so the problem is the width of the garage. You could reduce the width of the garage and build it out to the north a little bit.

J. Humphrey: it is a very steep grade going north and we only feel comfortable going to where we are at today with placement.

Dloski: our problem is you can build the garage on this site without a variance. I have not heard anything here about this property which requires a variance. So you are saying topography is an issue.

Wahl: when did you buy the house?

L. Humphrey: 2013. The house was built in 1974, and it was parceled in the 1980s or 1990s.

Wahl: does this make a house legal non-conforming?

Deeren: yes, it was partially the township's fault in that it should never have been approved to have a subdivision and create a non-conforming house. Ideally this is not what we do. I don't know if it was a bad survey at the time or what happened because I was not here. We would not approve that today at all. You would have had to move the house to get the subdivision in right so they put in the easements.

L. Humphrey: so everything is a result of this subdivision going in.

Wahl: and when did the subdivision go in?

Deeren: I don't know. This was probably at one time the original piece. Then the west side was all subdivided out. I would say it was probably sometime in the 1990s.

Dolton: it appears there are no more questions for the applicant. Thank you.

Deeren: there is a letter in the packet addition and from the property owner to the north west who opposes this variance. They share the easement for the driveway

Dolton: is there anyone who wishes to speak in favor of the applicant?

Doug Rigan 1150 Gray Road: I am a licensed builder and was a building contractor for many years. I am quite familiar with trying to build a garage on a hill and I am just here in support of this application. I would like to say in the big scheme of things it is really not going to affect anything. I think 2 feet here or there is fine. You have a hill that falls off to the north and falls off to the east, so we are trying to utilize the top of this hill and that is the challenge. You question the size and we are talking about the depth and not necessarily the width. The depth is important for cars and for storage. A 23-24 foot garage is not a very deep garage. I support this request.

Dolton: is there anyone here wishing to oppose this variance? There is a letter in the packet addition opposing this variance.

Wahl: does this dimension include the overhangs and do you know how big they are?

Deeren: your overhangs need to be behind this line so if you get a variance the overhang of the

garage cannot be closer to the line.

Dloski: the gentleman just said a 24 foot garage. However, if it was constructed according to the ordinance, the width of the garage would be 28 feet. So this would make it 38x28, correct?

Dolton: Yes, on the size.

This closes the public session and I now bring it back to the board. The one thing that concerns me and is in favor of the applicant is the township error on the split and if the error had not been made, then the house itself would meet the 35 foot set back requirement. So this is an issue I am taking seriously.

Wahl: yes, knowing now how far over that house is within what the setback is and it's not something the applicant created. This was there when they bought the property. It's 21 feet and they are looking for 33 feet and this does play in their favor.

Dloski: but in light of all that, they can still build a substantial garage. Our job is to make sure we have a legal basis upon which to grant the variance and if they can build a 38x28 foot garage without a variance, I have not heard a legal basis for the variance.

Deeren: in looking at this today, it is obviously clear this happened with this type of division. Whether that line shifted when it was platted, I have no idea.

Dloski: even if that was the case, they can still build a substantial garage without a variance.

Dolton: we will now go through all of the 6 conditions. Please state your reasoning if you vote no. This is recommended by our legal counsel.

Fahey: in addition to explaining your reasoning for a no vote, I also think to have the most defensible record possible please also articulate reasons for being in favor of a condition.

Dolton: it is important to actually have, if necessary, any comment or discussion so we can be clear on the standard of each condition.

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

1. 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.

Dolton: any comment or discussion on this condition?

Wahl: this is hard now knowing how far back that house is from the setback. I understand that the garage would not be legal on a non-conforming basis on the new setback with it being 21 feet and then we are looking at 33 feet. I don't know if there is a legal justification there in terms of the house already being pushed back so far.

Dolton: I think in terms of risk and the lawyer can correct me if I am wrong, I think the legal risk is we turn something down and the applicant appeals.

Fahey: in my opinion the self-created hardship factor that seems to be impacted by the possibility of township error in the placement of the house is just one of the factors. I would just reiterate all the standards have to be met in order for a variance to be granted.

Dolton: I think we are ready to vote.

Yes: Wahl-this is somewhat based on township error, which is a unique circumstance.

Yes: Dolton-the township error with the split is what's causing this problem.

No: Dloski-I do not see there are unique circumstances or physical conditions because they can build a substantial garage sized 38x30 without a variance. I do not see any reason other than the owners wanting to build a bigger garage than what is legally permitted.

No: Elliott-I do not think a garage 38 feet is a hardship. The hardships are these steep slopes, but it's a big garage 28x38 feet.

No: Serocki- I agree a 28x38 is a very large garage.

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

Dolton: this condition means the property owner or a previous property owner did something such as changing the topography or something else that is now causing this property to require a variance.

Yes: Dolton- I am going to vote yes.

Yes: Wahl- I am voting yes for the same reason as in condition 1, which is due to the township error.

No: Serocki-the need for the variance is a result of wanting a larger garage and I do not think having 2 feet taken off would make much of a difference. They would not need a variance and still have a large garage.

No: Elliott-they can still have a large garage and not need a variance.

No: Dloski-what is a self-created problem is the owners willing or wanting to build a garage that exceeds the ordinance requirement when they don't have to. Again, a 38x28 foot garage would certainly be suitable there and they would not need a variance for that particular building envelope, so they are self-creating this problem.

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

Dolton: any comments or discussion? Hearing none, let's vote

No: Ashley- this is a hard one because they are on a 10 acre lot and I think there are alternatives as well as building a smaller garage.

No: Dolton- this does not prevent the property owner from constructing a garage.

No: Elliott-conformity with these regulations is not unnecessarily burdensome.

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No: Dloski- strict compliance will not prohibit them from building a substantial garage that complies with the township ordinance.

No: Serocki- for all the reasons already stated.

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

No comments or questions.

Yes: Wahl- any time you do build a house, it provides some sort of justice to additional property owners.

No: Serocki-I don't think this will provide substantial justice to neighboring property owners because I don't think this is a typical situation.

No: Dloski-other owners are not going to benefit from this particular variance and again a garage can be built that complies with our variance ordinance.

No: Elliott-adherence to the code is not unreachable.

No: Dolton-no for the reasons already stated.

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

Yes: Dolton- I don't think this creates any adverse effect on related properties.

Yes: Wahl-it looks like the opposing letter owner is actually going to be getting rid of a portion of the easement and they are not going to be using the driveway , which would be a benefit to surrounding property owners in doing that. They have had an easement over their property forever and putting the garage there does not cause adversity.

Yes: Elliott-for the reasons already stated.

Yes: Serocki- yes-I do not see any adverse impacts on surrounding property owners.

No: Dloski: we have a letter from an adjoining property owner concerned that it will.

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

Dolton-this is a residential property. Residential use in my view is not changing.

Yes: Elliott- the garage is use by right and a variance would not change this.

Yes: Dloski-yes

Yes: Wahl- yes.

Yes: Serocki-yes.

Yes: Dolton-yes, not creating a new use.

Deeren: 2 of the 6 conditions pass.

Dolton: Unfortunately, all 6 conditions must be met to approve the variance. Calls for a motion

to deny the variance.

Dloski made a motion Request 904 be denied with a second by Serocki.

Dolton:

Patricia Rigan 1150 Gray Road: before you take your vote. I am listening to the comments you are all making and I am Lesli-Anne's mother. Doug and I have raised our children to love the outdoors and the peninsula. Doug and I have both lived on the peninsula since 1975. We have watched it grow and change. We have planted more than 3,000 trees on our property. Deeren and I have talked about how much the peninsula is growing. There are venue-looking buildings, sheds, barns, and outbuildings to accommodate the tractors, snow blowers and they have children with their bicycles, skateboards, and hockey equipment. They have looked at every way they can build a big enough garage for the bicycles and snow blowers. They are farmers and might need a tractor in the future. So they are trying to get everything under one roof without needing to build another structure in the future. I would rather see a garage be 2 feet larger than future structures needing to be built for their growing family and budding farming efforts.

Dolton: we may not like the zoning ordinances and yet it is the board's job to handle variance requests and how requests are evaluated is actually not something we get to choose. Those 6 conditions are what is in our code and are used to evaluate every request. There is a cross range of opinions with respect to this particular project on the board, but we have to follow our process and procedure and we want to do this in the most open way possible. We have a motion on the floor.

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

8. **Approval of Minutes from July 19, 2022 Regular Meeting** Elliot moved do approve the minutes with a second by Serocki. **Approved by consensus.**
9. **Citizen Comments** None
10. **Board Comments** Dloski reported the planning committee approved a bed and breakfast at the last meeting. I agree with John (Dolton). This is not an easy job. We are tasked with putting these variances into the legal slots where they belong.
Deeren: it is difficult when you are dealing with a large piece of property and not a postage stamp sized lot.
Wahl: for me it is difficult when you have a property that is already 21 feet and they are looking for 33 feet for a garage. There is already a substantial non-conformity.
11. **Adjournment** Dloski moved to adjourn the meeting with a second by Wahl. **Approved by consensus.**

Meeting adjourned at 7:50 p.m.