

Peninsula Township
Zoning Board of Appeals
August 17, 2021 7:00p.m.
Lola Jackson Recording Secretary

PENINSULA TOWNSHIP
REGULAR MEETING
ZONING BOARD OF APPEALS MINUTES
13235 Center Rd., Traverse City, MI 49686
August 17, 2021
7:00 p.m.

1. **Call to Order** by Soutar at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Couture, Soutar, Elliott, Rowlett, Dolton
Deeren, Zoning Administrator
4. **Approval of Agenda** Couture moved to approve the agenda, seconded by Elliott **Passed Unan**
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None
7. **Business:**

1. Request No. 895, Zoning R-1C

Owner: Gregory and Staci Billings, 40 Castleton Ct., Barrington, IL 60010

Applicant: Gregory and Staci Billings, 40 Castleton Ct., Barrington, IL 60010

Property Address: 7015 East Shore Rd., Traverse City, MI 49686

1. Requesting a variance from the required fifteen (15) foot side yard setback to ten (10) foot side setback on the southerly property line in order to construct a 23 foot by 29 foot 1-1/2 story addition over the existing non-conforming garage of record.

Parcel Code # 28-11-031-015-00

James May 3387 Veterans Drive

The request is to add one story onto an existing non-conforming garage. The lot width and topography restrict any side additions to the structure. There is no increased encroachment request by adding height to the existing encroachment. The septic system will be moved out of the road right-of-way and placed in the rear of the property.

Soutar: a letter came in late from the closest neighbor to this property stating their approval of the proposed height addition request.

Is there anyone who wishes to speak in favor of this application? Hearing none, is there anyone who wishes to speak against the proposal? Hearing none, I bring this back for board comments.

Elliott: this does not increase the non-conformity of the property and I have no objections.

Rowlett: Is this their summer residence and does it have a two car garage?

May: this is a summer residence and we are removing several trees in order to move the septic out of the road right-of-way. This does result in one additional parking space.

Soutar: building the structure up one and a half stories gives benefit to the owners. Moving a septic system that is grandfathered in is desirable.

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Elliott moved the variance be approved with a second by Couture.

Roll call vote: Yes-Dolton, Couture, Elliott, Rowlett, Soutar

Soutar: The Board will now go through the 6 Basic Conditions that must be met.
Section 5.7.3 (1) BASIC CONDITIONS: The applicant must meet ALL of the following Basic Conditions.

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

Elliott, Rowlett, Soutar, Dolton, Couture Yes: Condition has been met

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

Elliott, Rowlett, Soutar, Dolton, Couture Yes: Condition has been met

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

Elliott, Rowlett, Soutar, Dolton, Couture Yes: Condition has been met

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

Elliott, Rowlett, Soutar, Dolton, Couture Yes: Condition has been met

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

Elliott, Rowlett, Soutar, Dolton, Couture Yes: Condition has been met

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

Elliott, Rowlett, Soutar, Dolton, Couture Yes: Condition has been met

Deeren: the 6 conditions have been met and the variance is granted.

2. Request No. 896, Zoning R-1B

Owner: Colin & Christine Murphy, 50204 Harding St., #275, Canton, MI 48188

Applicant: Kenneth King, AIA-Cornwell Architects, 109 E. Front St., Traverse City, MI 49684

Property Address: 12774 Peninsula Drive, Traverse City, MI 49686

1. Requesting a variance from the required thirty (30) foot front yard setback to a twenty-seven (27) foot front yard setback in order to expand a non-conforming 74 square foot shed

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- and construct an additional 70 square feet to the non-conforming structure.
2. Requesting a variance to expand a non-conforming shed from 74 square feet and add an addition of 70 square feet to the non-conforming structure with a two-fixture bathroom facility and a height of fourteen (14) feet.
 3. Requesting a variance from the required thirty (30) foot front yard setback to a nineteen (19) foot front yard setback in order to expand a non-conforming 74 square foot shed and construct an additional 70 square feet to the non-conforming structure.
 4. Requesting a variance from Section 6.2.2(2)(d) iv: The floor of the deck at any point shall not have a height greater than thirty (30) inches above the finished grade of the site and no higher than the center of the traveled surface of the adjacent roadway. Requested variance is for the floor of the deck to be seven feet (7) in height to the new deck floor with storage area below deck surface.

Parcel Code # 28-11-133-019-00

Mark Humitz AIA-Cornwell Architects 109 E. Front St.

My client wants to improve the functionality of a currently existing lakeside shed to store kayaks and canoes. The main house is bisected by the road and makes the property into two separate lots. Crossing the road to access the beach is a safety hazard and hardship. On the water side, the topography has changed. The hillside to the beach has become steeper over time.

Kenneth King AIA-Cornwell Architects 109 E. Front St.

The first request is to relocate a non-conforming structure and the second was to expand a non-conforming structure. We would make the structure parallel to the high watermark and the road side setbacks. The narrowness of the beach makes it hard to move the shed back toward the hillside. The current 8x10 shed does not allow for storing watercraft such as kayaks and canoes. A compartment in the shed will have a composting toilet. The variance request from Section 6.2.2 would allow the construction of the deck floor to be seven feet in height and would allow for a safer staircase. There is no way to build a deck that is 30 inches above the finished grade.

Soutar: does the board have any questions for the applicant?

Rowlett: what is a composting toilet?

King: this is a waterless toilet that degrades the waste without using water and is periodically emptied.

Deeren: is the plan to remove the existing shed and replace this with an entirely new structure?

King: we will salvage whatever we can from the existing shed.

Deeren: will this require a new slab?

Elliott: on my site visit, I did not see a cement slab.

King: right now the floor is wood.

Couture: so there is no way to build a deck that is 30 inches above grade?

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King: according to the ordinance we would need 35 feet from the high watermark, which is 10 feet from where the bluff starts so there is not enough buildable area or at the higher side of the road right-of-way, there just is not space.

Couture: what are the measurements of the existing deck?

King: 14x16 feet

Couture: so what is the practical need for a bigger deck?

King: the existing structure is quite close to the waterline. Where the deck sits now, it could be subject to erosion. This helps stabilize the existing deck from sustaining damage from the water. The higher platform allows for stairs to make access to the beach safer and more convenient.

Couture: is there any current concern regarding erosion? In building the deck, would there be any vegetation removed?

King: yes, the hillside is heavily vegetated and some plant removal would be required. The idea is the structure itself would help stabilize the hillside.

Couture: with all the erosion occurring around here right now, this is a concern for me.

Deeren: this site does not have any erosion on it because of the ground coverage. My concern is what the site looks like in 10 years if the vegetation is removed.

Rowlett: You are going to put a loft in the shed? How high up does the shed go? Is that ok.

Deeren: I cannot issue a land use permit today because the road divides the property. I have an accessory structure without a residential building, but the ordinance is clear when the road divides a property. There is no height restriction on it. This is something you would definitely see when driving down the road; right now you need to look down to see it.

Couture: what is the purpose of the loft? Is this sleeping quarters?

King: additional storage.

Soutar: is there anyone who wishes to speak in favor of the proposal? Hearing no one, is there anyone who wishes to speak against the proposal? Hearing none, the discussion returns to the board.

Elliott: with the shed, there is a substantial increase in a non-conforming structure. You have moved it a little bit, and there is a small decrease there, but the volume has is a substantial increase in non-conformity. This is not a use-by-right and the shed is a no go. With the deck, it is clear from Section 6.2.2(2)(d) iv: the floor shall not have a height of more than 30 inches. This request is for 7 feet. This is a sensitive area, and even if it weren't, I am against all four variances.

Rowlett: I concur with Elliott. I am also concerned about installing electricity with its own meter.

Soutar: for me the red flag is the electric. Why do we need to have electric near the water? The structure seems more like a house rather than a shed. This stretches the definition of a shed versus an occupied structure.

Couture: I am sympathetic to a home owner who has their property divided by a road, if you have to go to the bathroom, you have to go home. As a home owner myself, I understood when I moved to Peninsula Township I was subject to the zoning ordinances. When you come to this board looking for a variance, there has to be a good reason for a variance from the law. These

types of requests are taking a large bit out of these applicable laws. The deck request is just too large an increase.

Dolton: unfortunately, both of the current structures are non-conforming. Currently, only one side of a split lot can be built upon. You are grandfathered in and can replace them as long as you are not increasing the intensity of use. This is an intensity of use. If you came to us and said the shed is falling down, you could rebuild it. This board needs to be consistent with the previous decisions reached in regards to this specific situation of a split lot.

Elliott moved to approve variance request number one requesting a variance from the required thirty (30) foot front yard setback to a twenty- seven (27) foot front yard setback in order to expand a non-conforming 74 square foot shed and construct an additional 70 square feet to the non-conforming structure with a second by Dolton.

Soutar calls for a roll call vote. Couture raises a point-of-order. We are voting to approve a variance without going through the 6 conditions? Elliott restates motion subject to approval of the 6 conditions. The board then discusses the procedure for approving or denying the variance.

Roll call vote- Yes-Elliott, Rowlett

No-Soutar, Dolton, Couture

Failed

Dolton moved to accept variance request number one subject to the 6 conditions with a second by Elliott.

Roll call vote- Yes- Couture, Elliott, Rowlett, Dolton

No-Soutar

Passed

Soutar: The Board will now go through the 6 Basic Conditions.

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

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

Couture, Elliott, Rowlett Yes: Condition has been met

Soutar, Dolton No: Condition has not been met

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

4. That the variance will do substantial justice to the applicant as well as to other property owners in the

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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.

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

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

Elliott, Rowlett Yes: Condition has been met

Soutar, Dolton, Couture No: Condition has not been met

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

Deeren: 4 out of 6 conditions did not pass.

Elliott moved to deny variance request number 1 with a second by Dolton.

Roll call vote: Yes-Couture, Dolton, Elliott, Rowlett, Soutar Passed Unan

Dolton moved to approve variance request 2 subject to meeting the required 6 conditions, seconded by Elliott.

Roll call vote: No-Soutar, Rowlett, Couture

Yes-Elliott, Dolton Failed

Couture moved to approve variance request 2 subject to meeting the 6 conditions, seconded by Elliott.

Roll call vote: Yes-Elliott, Couture, Rowlett, Dolton

No-Soutar Passed

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

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

Dolton, Rowlett, Elliott, Couture- Yes: Condition has been met

Soutar No: Condition has not been met

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

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

Elliott Yes: Condition has been met

Soutar, Dolton, Couture, Rowlett No: Condition has not been met

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

Deeren: 5 out of 6 conditions did not pass.

Elliott moved to deny variance request number 2 with a second by Dolton.

Roll call vote: Yes-Couture, Dolton, Elliott, Rowlett, Soutar Passed Unan

Dolton moved to approve variance request number 3 subject to meeting the 6 conditions with a second by Elliott.

Roll call vote: Yes-Elliott, Couture, Rowlett, Dolton

No-Soutar Passed

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

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

Dolton, Rowlett, Elliott, Couture- Yes: Condition has been met

Soutar No: Condition has not been met

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

4. That the variance will do substantial justice to the applicant as well as to other property owners in the

district, or whether a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

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

Elliott Yes: Condition has been met

Soutar, Dolton, Couture, Rowlett No: Condition has not been met

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

Deeren: 5 out of 6 conditions did not pass.

Elliott moved to deny variance request number 3 with a second by Couture.

Roll call vote: Yes-Couture, Dolton, Elliott, Rowlett, Soutar Passed Unan

Dolton moved to approve variance request number 4 subject to meeting the 6 conditions with a second by Elliott.

Roll call vote: Yes-Elliott, Couture, Rowlett, Dolton, Soutar Passed Unan

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

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

Dolton, Rowlett, Elliott, Couture- Yes: Condition has been met

Soutar No: Condition has not been met

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

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

Elliott Yes: Condition has been met

Soutar, Dolton, Couture, Rowlett No: Condition has not been met

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

Elliott, Rowlett, Soutar, Dolton, Couture No: Condition has not been met

Deeren: 5 out of 6 conditions did not pass.

Elliott moved to deny variance request number 4 with a second by Rowlett.

Roll call vote: Yes-Couture, Dolton, Elliott, Rowlett, Soutar Passed Unan

Discussion on procedure for making motions to approve or deny before voting on the 6 conditions. Dolton recommended seeking attorney advice for future meetings.

Mark Humitz

I have served on the Long Lake Planning Commission for 2 years and the 6 conditions are based on fact and you should go through the finding of fact before you make a motion to approve.

9. Approval of Minutes from July 20, 2021 Regular Meeting

Elliott moved to approve the minutes with the corrections from Serocki with a second by Dolton. Passed Unan

10. Citizen Comments None

11. Board Comments

Couture: this is my last meeting and I have enjoyed serving on this board.

12. Adjournment Couture moved to adjourn the meeting with a second by Dolton Passed Unan

Meeting adjourned at 8:05 p.m.