

PENINSULA TOWNSHIP

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PENINSULA TOWNSHIP ZONING BOARD OF APPEALS MINUTES

August 20, 2024
7:00 p.m.

1. **Call to Order** by Dolton at 7:00 p.m.
2. **Pledge**
3. **Roll Call** Dloski, Dolton, Cowan, Dunn, Excused absence: Wahl. Cram: Director of Planning and Zoning
4. **Approval of Agenda** Dloski moved to approve the agenda with a second by Cowan.

Approved by Consensus
5. **Conflict of Interest** None
6. **Brief Citizen Comments - (for items not on the Agenda)** None
7. **Business:**
 1. Request No. 919, Zoning R-1C
Applicant: Henry Janik. 3100 McAlpin Road. Ubly. MI 48475
Owner: Michael Thompson. PO Box 5243. Oak Brook. IL 60522
Property Address: 7197 East Shore Drive. Traverse City. MI 49686
 1. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a two-story single-family residence with attached garage 19.7 feet from the front property line, where 25 feet is required.
 2. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a two-story single-family residence with attached garage 11.5 feet from the side property line, where 15 feet is required.

Parcel Code# 28-11-500-003-00

Dolton reads Request No. 919 and asked for the finding of facts from Cram.

Cram: the property at 7197 East Shore Drive is zoned R-1C, suburban residential. The properties to the north, south, and west are zoned R-1C. Grand Traverse Bay is located to the east. East Shore Road divides the property. The home is on the east side of Bluff Road. An existing home on the property was built in 1956. The plan is to demolish the structure and build a new two-story structure with an attached garage. The new structure does not meet the front and side yard setbacks from Section 6.8 of the Zoning Ordinance adopted in 1972. The minimum lot size for R-1C is 20,000 square feet. The property on both sides of the road complies with the minimum lot size. The property currently uses holding tanks behind the residence for sewage

disposal. There is a new onsite septic system with a drain field proposed for the new residence. Topography of the property does include a steep grade, starting approximately 12 feet from the west side of the existing residence. Questions from the board?

Dloski: could this structure be replaced without a variance, complying with all zoning ordinances as far as setbacks are concerned?

Cram: yes. There is 12 feet behind the structure before hitting the base of the steep slope. If you look at the existing site plan, the current, non-conforming residence is at an angle 21 feet from the front property line. The existing dwelling encroaches over the south (side) property line. If the structure was moved 4 feet, it could meet the 15 foot required setback.

Dloski: if you turned it a little bit sideways and moved it back, it would fit, correct?

Cram: they would have to cut something off the structure and then they could build without a variance. Yes, this would fit.

Dolton: for a variance to be granted all 6 basic conditions must be met. If one fails, then the variance is not approved. Tonight we only have 4 members of the committee and 3 out of the 4 have to approve all 6 basic conditions. A tie is a no. You can choose to table this until our next meeting when there would be 5 members.

Thompson: yes, we would like to table this until next month when there are more voting members present.

Cram: we may not have enough voting members next month because we have one expired term, which has not yet been filled. No one has stepped forward to serve; we have a full term ZBA position and one alternate position open. An alternate may fill a vacancy for quorum.

Thompson: given this information, we will proceed tonight.

Mike Thompson 7197 East Shore Road, Traverse City: I am the owner of this property, which I purchased 3 years ago with the intention of remodeling the home. A contractor stated the structure was deteriorating and needed to be replaced. There was mold, carpenter ants, and a failing roof. We plan to replace this house with a new one up to code. I have tried to keep a natural look to the property by not removing any trees or digging into the hill behind the house. When we did the property across the street, along the lake, we hired a landscaper who created the same natural look. We now want to do the same with the house by using the existing footprint and going up a story. This will add more room for my family. There is a steep hill behind the house and trees along the base of the hill. We do not want to remove any trees or build a retaining wall.

Jesse Mitchell 3356 Jackson Road, Kingsley: the structure was created before the zoning ordinance of 1972. This board exists to help reduce the non-conformity of structures built before 1972, and not make the problems worse. The steep hill is 12 feet from the structure. The building code requires you have positive drainage 10 feet from the structure. If the applicant is forced to move the structure back, he would have to put in an engineered wall to handle this. Trees might have to be removed, or there could be problems with erosion. The township discourages cutting into these steep, wooded slopes. Denying this application forces the applicant to expand into this steep slope, rather than granting the front setback. On the side variance, he is asking to use the same envelope and retain as much room for the septic tanks on the northwest corner as possible. He has 2 tanks and if he were to move the structure north, all the way to the setback, he is going to have to find new areas for those septic tanks. The owner does have a hardship here and this board would be granting justice to award this variance.

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Dolton: asks if the board has any questions for the applicant.

Dloski: how many square feet is the current structure?

Thompson: 1,200 square feet.

Dloski: how many square feet is the proposed structure?

Thompson: 2,400 square feet, with the 1 story addition above.

Dunn: why can't this new home be built without a variance?

Jesse: the current structure does not meet the setbacks in Peninsula Township. Any construction activity that is non-conforming must have a variance.

Cram: you are building a new structure. You are scraping the existing structure and starting over.

Jesse: if the applicant leaves one brick there?

Cram: that is replacing the structure.

Cowan: are you going to build on the existing foundation?

Jesse: no.

Cowan: this begs the question, if you turned the new structure slightly and made the structure a little bit smaller, it would be made to conform on the property. I am talking about shrinking the footprint of the house from the north and south. This would squeeze in there without having to dig into the steep hill behind the house.

Cram: you could move the structure back 4 feet as well since there is currently 12 feet from the existing house to the base of the hill.

Cowan: it seems possible to build a new, two story structure without a variance.

Dolton: is there anyone here wishing to speak in favor of this request? Seeing none, is there anyone who wishes to speak against the request?

Ed Seymour 7169 East Shore Road: I am the neighbor 2 doors to the south. I am saying build this to the existing codes and use the proper setbacks. The neighbor next door has a 6 foot wall they built into the hill and have a patio behind the house (see letter in packet).

Dolton: closed the public hearing and recommended the 2 variance requests should be handled separately.

Cowan: when I drove down the road the existing homes appeared to be the same distance from the road as the applicant's house.

Dolton: I cannot see penalizing a property if the neighboring properties appear to have a similar situation.

Dloski: there is absolutely no question if this house is demolished and a new house could be built that conforms to all of the setback requirements and building codes.

Dolton: there is an argument to be made about allowing the front yard setback based on the requirement to dig into the back hill. We should be conscious of this. Moving or replacing a non-conforming structure has 2 standards. One is an increase of intensity of use. If you double the square footage, you might be increasing the intensity. The other required standard under the replacement section is the replacement structure has to be less non-conforming than the existing structure. We will do the 2 variance requests separately.

1. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a two-story single-family residence with attached garage 19.7 feet from the front property line, where 25 feet is required.

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.

Dunn: No-effectively if they are taking down the house, they can conform to our zoning ordinance without a variance.

Dolton: No-given the detailed nature of the lot itself, there is technically room. There is no standard in terms of cutting into the hill side or aesthetics. Given it is possible to build a home within the appropriate footprint.

Cowan: No- I agree with Dunn and Dolton.

Dloski: No-there is no evidence presented that they would need to cut into the hill to comply with the front yard setback.

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

Dloski: No-it is not the creation from the previous property owner, but this property owner wants to create a situation to cause a variance where they do not need a variance. In my mind, it is self-created.

Dunn: No- I agree with Dloski, based on a similar analysis.

Dolton: No- I agree with the analysis presented.

Cowan: No- for reasons presented.

(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.)

Dolton: No- I do not find this unnecessarily burdensome to comply with the zoning ordinance.

Dloski: No-there is no evidence it would be unreasonable to comply with ordinance.

Cowan: No-I agree with Dloski and Dolton. They just want to build a bigger house.

Dunn: No- for 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.

Cowan: No, for reason already stated.

Dloski: No- for reasons previously stated.

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Dolton: No- for reasons already given.
Dunn: No- for reasons previously 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.

Dloski: No-in my view this will create adverse impacts. They can build the house without having a variance.

Dunn: No-I agree with Dloski.

Dolton: Yes- I am not sure keeping the existing setback would cause a detrimental impact to the neighborhood.

Cowan: Yes.

(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.

Dolton: Yes- there is no change in use.

Dloski: Yes- there is no change in use.

Cowan: Yes-the use is consistent with the zoning ordinance

Dunn: No

Cram: summarized the voting for the 6 conditions and only Item F passed.

Dolton: calls for a motion.

Cowan moved to deny variance request 1 with a second by Dloski.

Roll call vote: Yes-Cowan, Dloski, Dolton, Dunn.

Motion passed

2. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a two-story single-family residence with attached garage 11.5 feet from the side property line, where 15 feet is required.

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.

Cowan: No.

Dloski: No- the residence can be turned and comply with the zoning ordinance.

Dolton: No- the ability to shrink the footprint is still available

Dunn: No- I agree with Dolton.

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

Dloski: No-it is not the creation from the previous property owners. These owners want to do a little bit more than what they could do under the current zoning ordinance. They can build this house without a variance.

Dunn: No- I agree with Dloski.

Dolton: No- it is possible to build this home without a variance.

Cowan: No- I agree with Dloski and 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.)

Dolton: No- I do not find this unnecessarily burdensome to comply with the zoning ordinance.

Dloski: No-there is no evidence it would be unreasonable to comply with ordinance.

Cowan: No-I agree with Dloski and Dolton.

Dunn: No- for 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.

Dunn: No-for reasons already stated.

Dolton: No-there is no need for the variance.

Cowan: No- you can build a house on the property without requesting a variance.

Dloski: No 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.

Dolton: No- in this case, granting of a variance would have an adverse impact simply because being so close to the neighboring property

Dloski: No- I agree with Dolton.

Cowan: No-I agree.

Dunn: No- I agree with Dolton.

(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.

Dolton: Yes- there is no change in use.

Dloski: Yes- there is no change in use.

Cowan: Yes-the use is consistent with the zoning ordinance.

Dunn: Yes- for reasons previously stated.

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Cowan: moved to deny variance request 2 with a second by Dloski.

Roll call vote: Yes-Cowan, Dloski, Dolton, Dunn.

Motion passed

2. Request No. 920, Zoning R-1C

Applicant: Peninsula Township, 13235 Center Road, Traverse City, MI 49686 (To be Tabled to September 17, 2024)

Owner: State of MI DNR, PO Box 30448, Lansing, MI 48909

Property Address: 4233 Moorin Place Drive, Traverse City, MI 49686

1. Requesting a variance from Section 7.4.7(A)(1) & (2) of the Zoning Ordinance to construct a public parking lot and boat launch within a delineated wetland, or zero feet from the edge of a delineated wetland where 25 feet is required.

Parcel Code# 28-11-587-001-00

Cram: Peninsula Township is in the process of constructing a new boat launch at Kelley Park. The site of the launch requires a variance due to a wetland. There is a preliminary site plan. The township is having a survey of the flora and fauna and several items. The township requests this application be tabled until the ZBA meeting on September 17, 2024. A public notice was published and if this variance is tabled to a date certain, the public notice does not need to be redone.

Dloski: is the township is going to provide a site plan and all the necessary information, so we can make an informed decision on this request?

Cram: yes.

Dunn moved to table request No. 920 to a date certain of September 17, 2024 with a second by Cowan.

Approved by Consensus

8. Approval of Minutes from the July 16, 2024, Meeting

Dunn moved to approve the minutes with a second by Dloski.

Approved by Consensus

9. Citizen Comments None

10. Board Comments

Cram: the ZBA is looking for one full time member and an alternate. If anyone is interested in serving on this board, please contact the township.

Dolton: thanked Dunn for his service on the board.

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

Approved by Consensus

Meeting adjourned at 7:40 p.m.