

**PENINSULA TOWNSHIP
REGULAR MEETING
ZONING BOARD OF APPEALS
MINUTES**

13235 Center Road, Traverse City, MI 49686
September 17, 2019, 7:00 p.m.

1. **Call to Order** Soutar called the meeting to order at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Soutar, McBride, Dolton, Couture, Wahl (absent), Deeren, Director of Zoning
4. **Approval of Agenda** McBride moves to approve the agenda. Dolton second. **PASSED UNAM**
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None

Meeting session was stopped at 7:04 p.m. while Deeren stepped out to call Wahl. Wahl did not answer. Meeting brought back into session at 7:09 p.m.

7. **Old Business**

A. Request No. 876, Zoning R-1C (Tabled from August 20, 2019 Meeting)

Applicant: Laurie Walker, 626 N. State St., St. Ignace, MI 49781

Owner: Laurie Walker and Ellen Exworthy, 626 N. State St., St. Ignace, MI 49781

Property Address: 6518 East Shore Road, Traverse City, MI 49686

1. Requesting a variance from the required front yard setback of 25 feet to 1 foot in order to construct a detached garage 18 feet by 20 feet and a covered porch 65 sq. ft.

Parcel Code: #28-11-031-028-00

Deeren: The County Department of Public Works (DPW) went out to the property on August 26, 2019 and reported there is a pump chamber. In order to have new construction placed in the proposed area the pump chamber, pumping unit, and electrical would all have to be removed and placed in a new location on the site provided they have room on the property to relocate this chamber.

Laurie Walker 6518 East Shore Road

Sarah Bourgeois 921 W. 11th Street Suite 2W Traverse City

I am the architect for the applicant. I was not here at the meeting on August 20, 2019 so I referenced the minutes, which are not yet approved, to see what was discussed. I would

like to start on page 5 of those minutes and make simple comments to the statements. You have the floor plan from the construction office from the 1980s showing the floor plan of the house. The packet from the zoning administrator had the garage cut off. So we never knew the garage was converted at some time and today that is living space. What once was the garage is now a family room. So one question is how many property owners are we responsible for as to what has been done to the house? I would say that conversion was not permitted.

Soutar: I would say at this point we really don't know. It is now all speculation. The garage was at one time on the north side. The interior space is not something we are going to have any input on what so ever. The other aspect we now know about is what is being referred to as a pump chamber is important as it looks like it would be where you want to put the garage and that is an important consideration for us to look at.

Bourgeois: The pump chamber is at least 4 feet away from the garage on the survey from Gourdie-Fraser and I know to stay away from that. If we do have to move it we will. I know as a professional that is one thing we do not want to do and this slows down construction. According to the DPW the sewer pipe is buried 6 feet deep. We are confident with this garage addition we are far enough away from the chamber and we would verify this before we ever dug a hole.

Soutar: I am surprised this has not been done already as it is pertinent to your plan.

Bourgeois: We need to have a variance before we can begin to know what we are dealing with. If we are denied then there would be no point in moving forward.

Deeren: On the survey you submitted there is no delineation as to how far back that is from the proposed structure.

Bourgeois: Right now we are working with the dimensions for the construction of the garage. Currently, there is no garage and somewhere around 1988 that garage was converted to living space. Laurie Walker has owned the house for 5 years.

Deeren: Is the overhang of the garage 1 foot as it looks in the drawing that it might go over the line.

Bourgeois: It does not go over the line. In addressing the concern about the setback requirement, we could reduce the garage size by 2 or 3 feet and move this further away from the right of way line. Next you went through the basic conditions. The issue was shallowness. Yes, it does meet the width requirement of 100 feet and we show 108 feet. Technically if you scale the property it is 97 feet wide and that is parallel with the house and the lot size itself is shallow. We are non-conforming at the north end and we are only 5 feet off the property line so there is really nowhere else to go due to the past variance of the 15 foot setback. I think we do meet that first condition. If we did need to remove the living space and put back the initial garage, it is not big enough for a full size pickup truck. We would still want to request a variance to add another 4 feet to the garage to make it the size we are requesting. That would be 22 feet deep and it would be really nice to get some extra width. This is our first choice because we do not want to lose living space. We like the aging in place and the one floor allows for this. We do not want to put living space on the second floor as was suggested in the last meeting. The south side of house has a basement and we

cannot put a second story on that side. There is no access from the, not to say that the zoning or inspectors were lax, but there is no connection between the basement and the crawl space. Someone did it on the sly and it happens all the time and who knows who did it. Nobody here knew about it and when the owners bought the house 5 years ago they did not know about it. Yes, we could stack the stairs and put on a second story, but the house works as it is now. The house has two bedrooms. The family room is where the garage used to be. Architecturally, it just does not make sense to add a second floor onto a ranch style house. A ranch style is a ranch style.

Dolton: I agree 17 feet is not big enough for a garage. I am wondering if you could do the expansion to the east. Expanding to the north puts you too close to the setback.

Bourgeois: You potentially could, but we do not meet that setback either.

Soutar: You are allowed by right to have a garage. If you choose to convert the living space back into a garage, this is your right. In regard to architectural design that is not what we are supposed to be doing here. But that would alleviate the problem. There was an existing garage that was changed and now you are asking for another one. You are into a gray area of the law right there. Because this does not meet the setback requirement, that is another area that we have a real problem with. So for us as a board we must apply the law. So the setback is a primary factor here for us. A second story creates no problem for us. This seems to be the consensus of the board right now.

McBride: Are there other options?

Bourgeois: There are. We could reduce the size of the garage we are asking for or convert the old garage back into a garage. We would still need a variance. Do we come back and ask for another variance? Or could we decide on that tonight?

Deeren: We cannot do that. The publication is for this specific variance, so they have to decide this specific variance which is before them. If there is something else that needs to be done, yes you would need to come back and ask for that in a separate meeting.

Bourgeois: We are fine with reducing the size of the garage or we could be denied. What is the lesser of the two evils? Coming back to another meeting causes us to lose more time. We are still asking for a variance at the north side of the house.

Soutar: Now I would ask the board if they have any other thoughts on this.

Couture: No.

McBride: No.

Dolton: No.

Soutar: I do not have anything either. You would like to have the garage to the fullest extent and I am not sure that is something we are prepared to approve tonight so do you want to suggest a lesser footprint for it? I am assuming that you do not want to put the old garage back where it used to be.

Dolton: How wide is your proposed garage in terms of space?

Bourgeois: I have an 8 foot overhead door, so it would be 8 feet wide. I am asking for 18 feet wide. 16 feet would work if we crunch things. Then we would need a 9 foot overhead door.

Deerden: Why don't you take the six feet and move the garage over. I know that is going to

put you right up against the house, but this would give you 6 more feet.

Bourgeois: We would lose daylight and other items like that.

Dolton: I would caution that even if you moved your proposed garage 4 feet toward the existing home that would take the 25 feet to 3.

Bourgeois: So the garage we are asking for is 18 feet by 22 feet. We need that length no matter where we put the garage. We would like to have enough space between the house and the garage to have a sidewalk about 4 feet wide.

Soutar: We did not know anything about the pump chamber and that was one item we needed to know. We did not know if you could do this at all based on the way you wanted to do it.

Bourgeois: I am not worried about the sewer or the septic. There are various regulatory requirements we will have to meet. Without a variance we cannot move forward with the project.

Dolton: Procedurally, as we have an even number of members tonight how does the voting work?

Deeren: A tie vote is considered a no vote.

Dolton: So does that mean they can choose to come back in front of the entire board?

Bourgeois: So when is the next meeting?

Deeren: The next meeting would be October 15, 2019.

Bourgeois: Was it the four of you at the last meeting?

Couture: I was not at that meeting.

Soutar: Would you prefer to come back to come back when we had a full five member? Three members constitute a vote of no. It only takes one of the six basic conditions to be denied for the variance to be denied.

Deeren: Unfortunately, if you miss one, the variance is not granted.

Bourgeois: We are going to move forward. Are we able to defer it again or not?

Soutar: When you see how the board discussion is going, if you want to defer I will give you that option.

Bourgeois: Thank you for that option.

Soutar: Is there anyone who wishes to speak in favor of this case. Being none, I would ask if there is anyone who wishes to speak against this application. Being none, I will now bring it back to the board.

Couture: One of the concerns Deeren raised is having a variance going this close to the road given the cable and other utility lines.

Deeren: The road commission has 33 feet. You would be close to it, but not into the road right of way. It would be close. This is for utilities and if they want to widen a road.

Dolton: Understanding that the garage is just outside of the road right of way, what does the additional 25 foot setback provide?

Deeren: If the road commission decides they want to widen the road and a structure was off the road right of way by 1 foot, the building would be literally right next to the road. That is why the additional 25 feet is required. This is for the protection of the structure. One thing I think about is what does this building look like after a snow plow comes by in the winter.

Dolton: One of the toughest things to meet for me is how to get around item b. where the need is not the result of the property owner or previous property owners.

Deeren: Yes, this is a hard thing to get around as the previous owner had converted the garage. Do you want to go through the basic conditions again?

Soutar: Not yet. I want to give other members of the board an opportunity.

McBride: So last time we got together we wanted to know if other options could be pursued. They are not interested in a second story. There is changing the old garage back into living space. There is just a 5 foot setback from the north, which is not a good option.

Deeren: You have to remember that the road comes in there at an angle. It looks like it is 10 feet to the line.

Soutar: Even though I would prefer to see a second story, you would still need a variance. There is a problem because you did not create this. Because you are being flexible, this gives us more options. One foot over the line would not be acceptable; I would like to see 10 feet from the line. That would give you 16 feet for a garage or a carport or whatever structure you would like to design to go into that location. Whether that is a 5 foot breezeway or 16 feet if you decide to semi-enclose existing I would bend to give you a 16 foot addition to the front of the house, but no closer to 10 of the property line..

Deeren and Soutar then looked at several maps to determine the actual setback.

Dolton: Let me propose a different way of looking at this. They have an 18 foot difference toward the house and 6 foot enclosed. So in order to create a 10 foot setback we have to carve 9 feet. If we give the 6 foot distance, the garage would have to shrink by 3 feet.

Action-Motion Moved by Dolton to approve a 9 foot setback from the 25 foot front yard setback, seconded by Couture.

Ayes: McBride, Couture, Dolton, Soutar

PASSED UNAM

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

a. 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.

Soutar, McBride, Dolton, Couture – **all agree the condition has been met.** PASS 4-0

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

Couture, McBride, Dolton, **all agree condition has not been met.** PASS 3-1
Soutar **Condition has been met.**

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.)

Soutar, McBride, Dolton, Couture **all agree condition has been met.** PASS 4-0

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.

Soutar, McBride, Dolton, Couture **all agree condition has been met.** PASS 4-0

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

Soutar, McBride, Dolton, Couture **all agree condition has been met.** PASS 4-0

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.

Soutar, McBride, Dolton, Couture **all agree condition have been met.** PASS 4-0

Bourgeois: Is it too late to ask for a deferral?

Soutar: Yes. All 6 conditions must be met for us to approve this request. Item B was not met.

Dolton: I think you had said the board might look to the east side of the property.

Soutar: You are going to have the same problem as we are having with this one right now. Conditions a and b are virtually interchangeable. You have a problem with a circumstance of the property and the property to say that the actions of the property owner determines the size and the shape of the lot is not correct and so to me you have to look at these as something that goes hand-in-hand. Because that shape is paramount then no matter what the property owner does, you might run into a problem in addressing the b issue, which is the action of the property owner. Consequentially, this house could not be built today because you do not have

enough room to build it and so therefore any action of any property owner would not be acceptable to us because the shape of the lot does not allow it. So a and b are the conundrum we have been in for the last 10 to 12 years since I have been on this board and it is a problem that I do not think we are ever going to solve. We are going to philosophically and ethically look at what these two conditions are to each other because the size of the property is the paramount factor here. I do not know what we do about it but we cannot just say gee this is how we are looking at it. It is, but it is not the entire issue. I am just trying to give you some perspective as to how we have looked at this in the past.

Dolton: I think the time to address this issue would be at another time. This is a problematic issue.

Deeren: This is a pretty standard in zoning that these conditions are required to be met. We just need to look at each request separately. This is something the township adopted. The state of Michigan uses it.

Soutar: We are never going to get away from it and it is the way we look at these two items. I am not trying to change your minds; I am trying to open your minds as to how these affect everything we do. When you have a postage stamp lot, yes, it is never going to be built upon.

Deeren: What you probably have here is a house that was built before the zoning laws were in effect so it is pre-existing, non-conforming. This was built before the township adopted the zoning. Once they put ordinances in and then made the setbacks for those ordinances that is what we need to live with.

Soutar: So to do justice to someone also comes into play here and again if we were thinking of other options, I agree the second story makes the best sense.

Deeren: That would be another issue and they would need to reapply for it.

Dolton: Philosophically, I think there is some judgment about the strict application of that. Yes, there is some variation between a and b.

Soutar: That is why I went to look at this in this particular way. It is the least amount of variance to do and approve this.

Couture: From my perspective they are looking at a 9 foot variance to build that garage. The best thing would be to turn the garage space back into a garage.

McBride: That was my thought as well. We talked about property owners having rights but it is up to the board to make sure that they have the right size garage which is up to code. What might have been acceptable before is not now.

Deeren: To decide this case I think we should have a motion

Soutar: So they could come back with a new request without any cost?

Deeren: No. The publication cost alone is \$300. I would have to check with our attorney, but I do not think you have the right to waive a fee.

Action-Motion Moved by Dolton to deny a 9 foot setback from the 25 foot front yard setback, seconded by Couture.

Ayes: McBride, Couture, Dolton, Soutar

PASSED UNAM

Action-Motion Moved by Couture to deny Request 876 for a variance from the required 25 foot front yard setback to a 1 foot front yard setback, seconded by Dolton.

Ayes: McBride, Soutar, Couture, Dolton

PASSED UNAM

8. Approval of Minutes from August 20, 2019 McBride moved to accept the minutes as amended. Second by Dolton.

PASSED UNAM

9. Citizen Comments

Nancy Heller
3091 Bluewater Road

If the board is going to make comments, this should go under board comments and not immediately after a vote for a variance. It is not up to the board to remedy a problem for an applicant or to change the minds of members of the board immediately after a vote. By law you will have to follow the law

Soutar: I was surprised that the board did not come to a positive decision on this application and I may have come on a little too strong. For that I apologize.

10. Board Comments None

11. Adjournment Couture moved to adjourn with a second by McBride.

Meeting adjourned at 8:22 p.m.