

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

13235 Center Road, Traverse City, MI 49686
September 19, 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, Wahl, McBride, Dolton, Couture, Deeren (Director of Zoning), Meihn (Township Attorney)
4. **Approval of Agenda** Couture moved the agenda be approved. Wahl second. **Passed Unam**
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None
7. **Business**

A. Request No. 878, Zoning R-1C

Applicant: Scott & Alice Hilner, 213 Rose St., Traverse City, MI 49686-2711

Owner: Scott & Alice Hilner, 213 Rose St., Traverse City, MI 49686-2711

Property Address: 9682 & 9696 Center Rd., Traverse City, MI 49686

1. Requesting a variance from the required ordinary high water setback of 60 feet to 0 feet in order to combine two separate non-conforming parcels of record into one parcel and remove the existing non-conforming structures in order to construct a single family residence which is less non-conforming.

2. Requesting a variance from the required 30 foot set back to 0 feet in order to combine two separate non-conforming parcels of record into one parcel and remove the existing non-conforming structures in order to construct a single family residence which is less non-conforming.

Parcel Code # 28-11-017-018-00 & 28-11-017-018-10

Scott Hilner 213 Rose St. Traverse City

Hilner: I do not have a presentation. I thought my builder would be here. I have two properties I wish to combine and remove the non-conforming structures. I would then build a single family residence which is less non-conforming.

Soutar: Is there anyone on the board who wishes to ask a question?

No board member had questions for the applicant.

Soutar: Is there anyone in the audience who wishes to speak for this proposition? Seeing none, is there anyone who wishes to speak against this proposition? Seeing none, I will return this to the board.

Dolton: I think what is proposed is good.

McBride: This would result in a smaller footprint and be less non-conforming.

Soutar: There will be a less degree of the variance. It is important that these two parcels must be combined.

Wahl: This makes it less non-conforming. These are small, narrow lots and this variance makes a less non-conforming property.

Couture: Agrees with what other board members have said.

Action-Motion McBride moved to approve Request No. 878 as written with a second by Wahl.

Meihn: Add to the motion that this approval is subject to all 6 basic conditions being met.

McBride moved to approve Request No. 878 as written subject to all 6 conditions being met. Second by Wahl.

Voice Vote Ayes Couture, Dolton, Wahl, McBride, Soutar

Nay- None

Soutar: Requests Deeren take the board through the 6 basic conditions.

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, Wahl, Dolton, Couture **all agree Condition has been met.** **PASS 5-0**

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

Soutar, McBride, Dolton, Wahl, Couture **all agree condition has been met.** **PASS 5-0**

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, Wahl, Couture **all agree condition has been met.** **PASS 5-0**

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, Wahl, Couture **all agree condition has been met.** **PASS 5-0**

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, Wahl, Couture **all agree condition has been met.** **PASS 5-0**

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Lola Jackson Recording Secretary

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, Wahl, Couture **all agree condition have been met.** **PASS 5-0**

Soutar: All 6 conditions have been met.

Action-Motion Wahl moved Request No. 878, Zoning R-1C be approved. Second by Dolton.
Ayes Soutar, McBride, Dolton, Wahl, Couture Nays- None **PASSED UNAM**

B. Request No. 879, Zoning R-1C

Applicant: Michael & Christina Smith, 6425 Almond Lane, Clarkston, MI 48346

Owner: Michael & Christina Smith, 6425 Almond Lane, Clarkston, MI 48346

Property Address: 9783 Center Rd., Traverse City, MI 49686

1. Requesting a variance from the required front yard setback of 25 feet to 10 feet in order to construct a single family residence.

Parcel Code # 28-11-540-001-00

Deeren distributes a letter to the board members. She received this letter today dated September 19, 2019 from the law office of Bishop & Heintz.

Soutar: The letter is written on behalf of Richard Fox who owns a property at 9760 Center Rd. This letter is Attachment 1 included at the end of these minutes. Soutar read the letter.

Couture: We are not here to address all of the points made in this letter. The issue we are deciding tonight is the variance application.

Deeren: In viewing the site plan it looks like the variance would be 5 feet. One concern is the parking area does not allow for an emergency vehicle to turn around.

Meihn: What is needed tonight is the acceptance or denial of the variance. This does not mean construction actually may occur. There are other requirements that must be met before going forward with building. It is important tonight that just the variance issue be decided.

Soutar: Would some of these additional requirements go through the township zoning department?

Deeren: Yes.

Dwayne Johnson Designer for Smiths
5589 E. Deblaay Ct. SE

This property was purchased by our client with the understanding this was a site with a good, flat area to build a house. On one side of the property is a very steep hill and we began to look at having to remove some trees and costs involved with potential soil removal. If we could get a variance, this would help us to not have to remediate any soil removed. We are asking for a small variance.

McBride: Are there other options such as moving this over to the south side of the property?

Johnson: Yes, we did look at this. However, we are going to need a septic field and a well and that is the best location for the house as the hill would not allow for this. We tried to keep the

footprint as small as possible.

Couture: The letter writer states the issue was created by the predecessors of title. Do you have any knowledge of this?

Johnson: I do not. The property was purchased from the previous owner who gave the impression a house could be built on the flat location.

Dolton: Have you explored cutting into the hillside?

Johnson: We have. There is a 6 foot rock retaining wall holding up part of the hillside and we would have to remove this. A larger, substantial retaining wall would have to be installed and this would increase costs.

Soutar: Is there anyone who would like to speak in favor of this proposal? Hearing and seeing none, is there anyone who would like to speak against this proposal? Hearing none, I will now close the public portion of the meeting and bring it back to the board.

McBride: You can see the elevation changes on the topography map. It is zoned for residential. They have a right to build a home there if it follows the regulations. The house might have to be smaller and involve some actions the owners might not like to take to meet those regulations.

Soutar: The hill is 160 feet high. A house on this lower, level pad would not obstruct anyone's view. The aerial photo shows there are no other structures around this site. The letter states you would be too close to Center Rd. The house is 77 feet from Center Rd. and you have a 33 foot right of way, which gives you plenty of room away from the road. Only a 5 foot variance would be needed.

Wahl: I understand moving the retaining wall would be an expense. It does appear the house could be moved to the southwest 5 feet without creating many deviations in the plan. I do think this house could then be built without a variance with minor adjustments to the plans. You could use the driveway in the same area.

Couture: In looking at our 6 conditions for granting a variance, item c, would having to move the stone retaining wall 5 feet be considered unnecessarily burdensome on the applicant.

Wahl: That would not be straight back, but would go on the southwest side.

Johnson: The septic field and the well need to go on that side of the house. We are doing a slab construction to keep down costs and the house itself does not have a retaining wall built into the design.

Wahl: What would be the expected retaining wall size if you dug into the hill? It looks like about 8 feet.

Johnson: Yes, it would be about 8 feet and you would have to taper the wall as it moves down the hill.

Couture: I think this becomes an easy question due to the large setbacks.

Dolton: I have to give credit to the applicant in the design of the house, which has a footprint of 757 square feet. Economic hardship is not a reason to grant a variance. Due to the steepness of the hill, carving into it does not make much sense. I am inclined to support this request due to the large setback, the small footprint, and only a 5 foot variance request.

Couture: Let me ask Deeren what is the exact request of the variance in feet?

Deeren: You are looking at a front yard setback of 25 feet to 20 feet, which is 5 feet.

Action-Motion Couture moves that Request No. 879 be approved subject to amendment of the 25 foot front yard setback to 20 feet. McBride seconds.

Voice vote Ayes - Soutar, McBride, Wahl, Dahl, Couture. Nays- None **PASSED UNAM**

Deeren took the board through the 6 Basic Conditions.

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, Wahl, Dahl, Couture **all agree Condition has been met.** **PASS 5-0**

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

Soutar, McBride, Dolton, Wahl, Couture **all agree condition has been met.** **PASS 5-0**

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, Wahl, Couture **all agree condition has been met.** **PASS 5-0**

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, Wahl, Couture **all agree condition has been met.** **PASS 5-0**

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, Wahl, Couture **all agree condition has been met.** **PASS 5-0**

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, Wahl, Couture **all agree condition have been met.** **PASS 5-0**

Soutar: All 6 conditions were met. Board took a voice vote.

Ayes-Couture, Soutar, Dolton, Wahl, McBride Nays- None

PASSED UNAM

C. Request No. 880, Zoning R-1B

Applicant: Sander & Wendy Weckstein, 13367 Bluff Rd., Traverse City, MI 49686

Owner: Sander & Wendy Weckstein, 13367 Bluff Rd., Traverse City, MI 49686

Property Address: 13367 Bluff Rd., Traverse City, MI 49686

1. Requesting a variance from the required 35 foot setback from ordinary high water to 9 feet in order to construct a wood deck.
2. Requesting a variance from the required 30 inches or 2 and a half feet above the finished grade of the deck to 54 inches or 4 and a half feet above the finished grade of the deck.

Parcel Code # 28-11-127-023-50

Wendy Weckstein 13367 Bluff Rd. Traverse City

I have lived at this residence for 27 years. With the high water, the deck footing had become exposed and unstable and presented a safety risk for people and other neighbors' docks and boats. We hired Kearns Construction who assured us that all of the proper permits were obtained. Unfortunately, they talked with the County of Grand Traverse and not the township. About 5 days before completing the project, the township came out and stopped the building due to a lack of permits. We realized if we had to remove this new deck, it would cause serious erosion. Without the deck we have no access to the water. We had no intention of trying to something outside of rules. This is the situation our neighbors find themselves in as well due to the high water level.

Deeren: Do you know when the first deck was built?

Weckstein: The house was built in 1990 and the deck was built in 1991.

Couture: Is the new deck any closer to the high water mark than the old deck?

Weckstein: Yes, this is much further back. The first level is 11 feet away from the water. The old deck had two footings hanging right above the water.

McBride: So we cannot use the grandfather law for our decision tonight?

Meihn: You cannot grandfather in an illegal act.

Deeren: There was nothing in the files that indicates a variance was ever granted on this property. I would like to know who the builder talked to from Grand Traverse County.

Dustin Kearns 2010 Kenwood Rd. Cadillac Michigan

Kearns (builder): I did not get the name of the person I talked with. She said if it was anything smaller than 200 square feet, I would not need a permit.

Meihn: Have you ever built anything in Peninsula Township?

Kearns: No, I have not.

Meihn: Grand Traverse County needed to direct you to the Peninsula Township.

Soutar: Are there people here tonight who wishes to speak in favor of this request.

Kent Rabish 13383 Bluff Rd

I am the property owner to the north and I was thrilled this deck was removed and replaced. The decks supports were being eroded week by week and it was only a matter of time before it fell into the lake. This has been the summer of southeast and northeast winds and we have been hammered all summer. This does not interfere with my view. I do not think they wanted to do this; they had to do it. I was concerned this deck was going to come apart and ram my dock. I support what they have done.

Edwin Stawicki 13349 Bluff

I am the property owner to the south. The erosion is more severe than any of us could imagine. I do not have any problem with this deck. Without this deck, the property owner cannot access the beach and it makes the property worth less in value. The erosion was washing this deck away.

Soutar: Is there anyone who wishes to speak against the proposal? Seeing none, the request is brought back to the board.

Wahl: They are moving a deck and even though it is not in compliance, this new deck is safer. If they had known the deck was not in compliance would this change my view?

Couture: If they complied with the 35 foot set back, this would be over and behind the slope. I can see why the original deck was built in that location and I can see why the new deck was built in this new location. I applaud Deeren for catching this. We would like to see more people coming in telling us what they would like to do rather than asking permission after the fact. The variance makes sense to me as they want be closer to the water. I understand that old wood rots out. This is what variances are written for and I am in favor of the project as written.

Dolton: I agree this must be flagged. They did not have much choice where to put the deck. The height of the deck requires more steps to get down to the beach and can be more of a safety hazard. They retained the trees and this I view favorably.

McBride: I can understand all of the reasons why this deck was removed. The question is how to enforce decks that are not in compliance. Is having a deck a right? A deck is not a structure you need to live in, so I have some trouble with this.

Meihn: This is why the conditions for a variance exist. The variance is granted so the next person who comes along has to deal with this issue and it then just goes on and on.

Dolton: If we were looking at all of the decks along Bluff Road, I would look more harshly on this project. That is not the spirit with which this was done.

Couture: I do not know the need for the variance is based on the old deck. I am looking at this as the need for the variance based on the new deck.

Meihn: If the old deck was still in place and they came before you, this would be viewed as a new project.

Deeren: It is up to the applicant to get the necessary permits required. If they had come in we would have talked about alternative plans, the setback requirements, and what the existing laws are.

Couture: What would happen if we did approve this variance request?

Deeren: They would need to come in and get a land use permit to complete the project and

they would be fined. I would write them a permit based upon your approval of the variance.

Action- Motion Dolton moves that Request No. 880 be approved as written. Couture second.

Voice vote Ayes - McBride, Wahl, Dahl, Couture. Nay-Soutar

4-1 Vote

Deeren takes the board through the 6 Basic Conditions.

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

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McBride, Wahl, Dahl, Couture **agree Condition has been met.**

PASS 4-1

Soutar- **Condition has not been met.**

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

McBride, Wahl, Dahl, Couture **agree Condition has been met.**

PASS 4-1

Soutar- **Condition has not 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.)

McBride, Wahl, Dahl, Couture **agree Condition has been met.**

PASS 4-1

Soutar- **Condition has not been met.**

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.

McBride, Wahl, Dahl, Couture **agree Condition has been met.**

PASS 4-1

Soutar- **Condition has not been met.**

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, Wahl, Couture **all agree condition has been met.**

PASS 5-0

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, Wahl, Couture **all agree condition have been met.** **PASS 5-0**

Voice Vote Taken.

Ayes-Couture, Soutar, Dolton, Wahl, McBride Nays-None **PASSED UNAM**

8. Citizen Comments None

9. Board Comments

Soutar: I think a discussion about the amending of variance applications needs to be discussed.

Dolton: Can the applicant make changes to their variance request while in front of the board?

Meihn: My advice to you is you take the application at face value and while you may want to assist people, it is better to table the issue and have them come back. If the board provides a solution to a problem, then another homeowner may come forward if they do not like what was done and say the solution was proposed by this board. You open up the door for a homeowner who wanted to do x and we give them y and then they come back angry because they really wanted x. With respect to builders, every city, township, and municipality in the state of Michigan requires a building permit. If you stay strict with the conditions, it will not put you in a difficult situation of having redesigned someone's home. I encourage a narrow view of the request as it is presented to you. This works to ensure justice and fairness.

McBride: We ask if there are other options.

Meihn: Yes, you can ask if there are other options and the applicant needs to offer proof this is not the case and a variance is needed. If they cannot provide you with this information, you can ask them to come back with that information. It is not up to you to offer those options

McBride: So how do we ask for adjournment?

Meihn: You can ask the homeowner if they want to table their request and if they say no, then you go with the information they are presenting. You do not make that motion for them.

Soutar: I try to gauge the board to see what our thinking is on an issue and if we have a consensus.

Meihn: This goes to what I would like you not to do in the future. Do not ask if there is a consensus among the board before the reading of the 6 conditions. I commend you for knowing it is ok to disagree. You have different perspectives on how to approach an issue and one should feel free to do so. Diversity of thought is what makes a good board.

10. Adjournment Wahl moved for adjournment with a second from Dolton. **PASSED UNAM**
Adjourned at 8:40 p.m.