

**PENINSULA TOWNSHIP
REGULAR MEETING
ZONING BOARD OF APPEALS
13235 Center Rd., Traverse City, MI 49686
September 20, 2022
7:00 p.m.
MINUTES**

1. **Call to Order** by Dolton at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Dloski, Ammerman, Dolton, Wahl, Serocki, Deeren: Director of Zoning, Jennifer Cram: Director of Planning, Kyle O’Meara, township attorney via Zoom.
4. **Approval of Agenda** Dloski moved to approve the agenda with a second by Serocki.
approved by consensus.
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None
7. **Business:**

1. Election of Officers – Chair and Vice Chair

Dloski moved to nominate Dolton as Chair with a second by Serocki.

Roll call vote- Yes: Serocki, Wahl, Dloski, Ammerman, Dolton **passed unan**

Wahl nominated Dloski to be Vice Chair with a second by Serocki.

Roll call vote- Yes: Serocki, Wahl, Dloski, Ammerman, Dolton **passed unan**

2. 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.

2. Requesting a variance from the required twenty-five (25) foot setback from a wetlands to 6 feet in order to construct a single family residence with an attached garage.

3. Requesting a variance from the required thirty (30) foot rear setback to fifteen (15) foot rear setback in order to construct a single family residence with an attached garage.

4. Requesting a variance from the required twenty-five (25) foot setback from a wetlands to zero (0) feet in order to construct a driveway through a wetlands area.

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

John C. Ansted Sr. 10215 Peninsula: I have a 3 acre property, with half being wetlands. The top of the property situation is unknown unless you get up and excavate to see what is there. We are requesting to put a driveway in to inspect the top part of the parcel. We have applied to soil erosion control and the DEQ, which is now EGLE. The driveway would be a base of 16 feet with gravel on the top of 12 feet. There would be a culvert approximately 20 feet across.

Dolton turns it over to the board to question the applicant.

Serocki: I have a question for Christina (Deeren). In looking at the site plan it goes into the garage, but then it also goes to the ordinary high water mark. Is that allowed?

Deeren: driveways do not have the same standards as structures do.

Ansted: the driveway could be curved to go directly into the garage.

Serocki: I did not see on the site plan where the septic and well were going to go.

Ansted: on our neighbor's property so it would be closer to the house. You would run a pipe underground up to 2 inches into the field. This would be an infiltrator style field, which is run under pressure.

Serocki: you do not know where the well will be located? Would the well be in the wetlands or in the ordinary high water mark?

Ansted: it would be in the upland.

Serocki: is the basement under the entire house or just under the garage?

Ansted: just the house.

Deeren: 50% has to be below grade to be considered a basement.

Ansted: we can make adjustments. We would not be bringing any fill in.

Wahl: this is a 2.92 acre parcel.

Ansted: it is tight on the east side. We have seen evidence of water on the top portion of the parcel, but we need to get in there to excavate and that is why we need the driveway.

Wahl: do you know the building envelope size on the 2.92 acres? When we look at the property, are we looking at the percentage of lot coverage for the house or the entire property?

Deeren: it is for the entire parcel.

Wahl: what is the issue with not being able to build on the east side of the lot?

Ansted: you have about a 25 foot drop to the wetland. Water would come off this area and cause more erosion. That is potentially why the land is wet there. The house would have eaves and help drain the water away from that area.

Dolton: when you first come off of Kroupa Road and enter the property, there is a section that is potentially larger than your proposed building site that's above the wetland. Why is that not a viable place to put the house?

Ansted: this would create more runoff onto Kroupa Road. What is this going to do to the wetlands? EGLE agreed with us and said this was the best place to put the house. They liked the idea of taking the driveway directly to the upland.

Wahl: would you even need a permit from EGLE because you would not be going through the wetlands? You would be east of the wetland and avoid the entire situation.

Ansted: they felt it would create a lot of problems.

Ammerman: do you have any documentation from EGLE?

Ansted: yes, we can get documentation.

Ammerman: it seems to me that just extrapolating the footprint of the house to the property to the east, there's more space to avoid the elevation issue that you characterized and I guess what would be interesting here is EGLE's delineation of the tradeoff between the runoff you described right here to bifurcating the wetland with the driveway you propose. I wonder what their assessment of those tradeoffs would be.

Ansted: I walk through the property two or three times a day just to get a better feel of the land. There is moisture in the land, no question about it. I don't think it is a wet, wet, wetland. Where we put the culvert should not impede anything as far as the natural state of the wetlands.

Ammerman: were there any suggestions that were less invasive. Did you think about accessing the home further west?

Ansted: yes, we thought about coming down Kroupa Road. Then we are coming down along the local road that creates a real big erosion situation.

Deeren: I just did a quick calculation. If you look at the east property line, there is 199.4 feet there and if you subtract the road out of there, which would be 66 feet road right-of-way, that takes you down to 133 feet. If you remove the front yard setback and the rear setback, which are both 30 feet, that removes another 60 feet. That gives you a side yard of 73 feet and if the house is 34 feet, it would definitely fit in there.

Dolton: when did you purchase the property?

Ansted: 2 years ago.

Dolton: the wetland ordinance was amended in 2018 and was therefore in effect when you purchased the property.

Deeren: in 2018 there was an amendment made to the existing wetland ordinance.

Dloski: if you look at the far east portion of the property, there is only a 4 foot drop in the topography. You could put a house in that area.

Ansted: heavy clay is there.

Dloski: do you have documentation to that effect?

Ansted: I can get it.

Dloski: we have to make our decision based on evidence. I am very surprised the state would let you build a road right through the wetlands. On the site plan it shows the storm water retention pond on the northeast side of the property.

Ansted: Deeren requested that we put in a retention pond. We could put it in other places on the property. I had to file for the flood control permit.

Deeren: you need this if you are seeking to excavate into the site.

Dloski: I think you want to build a house on the water and you are doing whatever you can do. t You do not need a variance to build a house on another place on the property.

Ansted: when EGLE came out with 2 representatives, we looked at Kroupa Road and just taking a road and extending it and going down. They felt absolutely not. It was going to just cause some erosion. This is also a very important fire lane for the fire department to be able to get

down there and turn around.

Dloski: are you talking about the two-track down there?

Deeren: I do not know if you could get a permit from the road commission. They would not maintain the road and may scrape it occasionally.

Dloski: let's say you get a variance and build the house. When there is a need for a fire truck, how do you get them all down there?

Ansted: the trucks can get down and then turn around on the driveway. They could get a tanker down there.

Dolton: I have a question on your proposed driveway. That's a rather steep hillside there. Then in looking over the bank, which is basically going straight down, how are you going to manage that?

Ansted: we can swing the driveway wider closer to the property line and bring it around and down the hill. You could grade it with a bulldozer and take it off in layers. Then you support the bank as you taper it down.

Dolton: is this a year round residence?

Ansted: yes

Dolton: the issue we are struggling with is the wetland ordinance that was amended in 2018. The ordinance is highly restrictive and requires a 25 foot setback for a driveway. You are proposing a driveway through the middle of a wetland. The argument is that your proposal is actually less harmful to the wetlands than the roadway through the wetlands when our requirement is you cannot get within 25 feet of a wetland. You do have a permit from EGLE, but we need to see the documentation for this particular plan.

Ansted: why would EGLE even consider issuing a permit if that were the case?

Dolton: the board is sympathetic to wanting to build a house on the water. However, the wetland ordinance is clear.

Ansted: we can create the setback by using blankets so the equipment would not damage the wetlands.

Dolton: and then you would have a driveway through the wetlands.

Deeren: I would recommend you have more documentation regarding building on the east side and come back next month with that information.

Dolton: what we have in front of us is you have a permit from EGLE that's subject to state and local governmental regulations. We have an ordinance in place which says you cannot do this. I think if you put this to a vote tonight, your chances are fairly slim for being granted a variance. I cannot say this for certain, but you might consider having us table this until you have more documentation.

Dloski: I have a question regarding item number 4 on your permit which states to install a 15 foot wide by 200 foot long wetland crossing in order to access the first buildable location on the property. Do you know what they are talking about there?

Ansted: they are saying the first buildable location is where we have the proposed site. They are allowing a driveway to enter there.

Deeren: you have almost 3 acres of land there. Did you get additional land divisions with this property?

Ansted: no

Dolton: if we tabled this tonight, would there be additional costs to the applicant?

Deeren: I would need to do a packet addition with the additional information.

Dolton: so if we table this you have one month to provide us with compelling information that might sway our thinking about this.

Ansted: I was writing down the east side versus the west side and you made two points.

Ammerman: EGLE's delineation of the tradeoff between the runoff you described to the bifurcating the wetland with the driveway you propose. I wonder what their assessment of those tradeoffs would be.

Wahl: do you actually have some blueprints of what you are actually going to be constructing on this property for us to see? Is there going to be a dock off of the house?

Ansted: yes, there is going to include a 6 foot deck

Wahl made a motion with a second by Dloski to table Request No. 903 with a date certain of October 18, 2022.

Roll call vote Yes: Serocki, Wahl, Dloski, Ammerman, Dolton passed unan

3. Request No. 905, Zoning R-1C

Applicant: Alfonso Joint Declaration Trust, Michael and Kay Bonita-Alfonso Trust, 10665 Bluff Rd., Traverse City, MI 49686

Owner: Alfonso Joint Declaration Trust, Michael and Kay Bonita-Alfonso Trust, 10665 Bluff Rd., Traverse City, MI 49686

Property Address: Bluff Rd, Traverse City, MI 49686

1. Requesting a variance from the required twenty-five (25) foot front yard setback to an eight (8) foot front yard setback to identify a new building envelope for a land division between lot(s) 13, 14 and 15 of Ridgewater Subdivision.

Parcel Code #28-11-625-013-00 & #28-11-625-014-00

Sean Flaherty 2210 Birchwood Ct.

Flaherty: we are here because 2/3 of that property has a steep incline. The 8 foot setback pushes us beyond the existing homes to the east. To the west there is an adjacent property, but that would give us enough room to kind of create a small envelope from that point we could then do a land division to split off our septic fields. We did go to the health department and talked to them about their encroachment agreement to reduce that setback. The setback is typically 10 feet from the property line to 2 ½ feet. We show that on the site plan provided to you. Our goal was to provide a buildable area for that property and not encroach further to the road. We are about 24 feet to the road edge and about 80 feet from the ordinary high water mark.

Dolton opens it up to questions from the board.

Dloski: it looks like you are going to attach this parcel to a 25 foot parcel of property.

Flaherty: that's correct. If we are able to get the variance for the front yard setback and we've already received permission from the health department to put the septic field in those

locations we then go for a land split and divide about 25 feet to the adjacent property.

Dloski: so there is a corner post by the house and there is another marker 25 to the north. That is the area where the septic would go. So if you are successful with the split you would give that to the property owner to the side. How big is your building envelope?

Flaherty: it's around 34 feet by 74 feet.

Dloski: is that the entire house or is that the entire building area?

Flaherty: we wanted to create a home within that area plus the garage and our goal was to create enough of a turn into the garage which would not cut the post. We could have a side entry to the garage, so we developed some clear plans. However, we did not want to go too far down the road because I have a home.

Dloski: there is a limited area with heavy dash lines

Flaherty: yes, that is where we projected. Our buildable area creeps up the bank a little bit.

Deeren: 34 x 74 feet comes out to about 2,516 square feet. The zoning is R1C so you get 25% of that entire area. The area you are proposing is going to be completely filled with structure.

Dloski: I have been out there and the bank is literally straight up and down. It is impossible to build into that bank. The envelope in the drawing shows about 2/3 of the envelope can be built on.

Are you going to grade that out?

Dave Whiteford 7520 East Shore Road: the preliminary foot print is easily 1200 square feet including the garage.

Wahl: what is the square footage of the houses to the north and to the south?

Deeren: the one to the north is larger, which is 2 stories. The south house is 1 story.

Wahl: there are 2 houses there. We went to the property today for a site visit. There is a property to the south and one to the north. My understanding is the middle lot is owned by a trust or they are owned by the same family and everyone is agreeable to this land division. My understanding is all 3 properties are legally non-conforming. Were they purchased at the same time?

Mike Alfanso 1065 Bluff Road (came to podium): they were different purchases. One was in 1973.

Wahl: do you know what the setbacks are of those houses to the north and south by any chance?

Deeren: the ordinance was adopted in 1972 and if this property was purchased in 1973 it should be conforming.

Wahl: it might just be more legal if you combine these properties in a trust. Then you could do essentially what you want to do.

Deeren: where is the septic to the south? Is there not a current drain field on the property?

Alfanso: I purchase the property in 1982. In the 1990s, the drain field failed. I could only put in holding tanks. Now some people are telling me it would be possible to put in a septic system. That is why I want the 25 feet so I can do that. We want to get away from the holding tanks.

Ammerman: what is the temperature of the neighborhood? Is there support for this project?

Flaherty: yes.

Serocki: if this road is widened, what is the closest it could be to this new property?

Flaherty: the road edge would be about 24 feet from our new setback.

Dolton asks if anyone wishes to speak in favor of the proposal, hearing none, asks if there is anyone against the proposal, hearing none, the public portion of the meeting was closed. Board discussion occurred.

Dloski: we have been saying the ZBA has to carefully analyze these requests. We need to make sure that these variances conform to the legal standards. The topography of this property is really severe in the back and I don't see how it can be built upon. That is the linchpin and determining factor for me in approving this variance.

Wahl: yes, they can't build anything on that property.

Ammerman: it is one for the few sites left on that stretch of Bluff Road where you could put a house. When you go further north the land gets steeper and the homes are closer to the road.

Wahl: if they expand the road, this will affect all those houses.

Dolton: the idea of creating a septic field instead of holding tanks is appealing. Another positive is the house is pushed further back from the road. Potentially, there could have been 2 homes on that site.

Serocki: when I read the basic conditions for a variance, they were written for this house. This moves the house away from the road.

Dolton calls for the board to consider each of the six conditions required for a variance. If any board member wants to have additional discussion before we vote on a particular condition, please indicate as such.

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.

Condition has been met

Dolton: Yes

Dloski: Yes- not so much for the odd shape, but the extreme topography that prevents building without a variance.

Wahl: Yes, because of the limited envelope of the property.

Serocki-Yes, because of the topography.

Ammerman: Yes, for all the reasons already stated.

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

Condition has been met

Dolton: Yes, no action of the property owner caused this.

Dloski: Yes, this was not created by the owners or previous property owners. This situation was created by nature.

Wahl: Yes, because of the topography is limited and there is not a whole lot of room to build.

Serocki- Yes, for the same reason as Wahl.

Ammerman: Yes, I think this is a reasonable request. It's not too aggressive. The magnitude of the variance is modest. They are not extending way back into the property behind them. This is a conservative and thoughtful footprint.

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.)

Condition has been met

Ammerman: Yes, I think denying them would be burdensome.

Dolton: Yes, it either would be unnecessarily burdensome or perhaps not possible at all.

Dloski: Yes, for the issues we have previously discussed. I am not sure it can even be built because of the dramatic topography to the west.

Wahl: Yes, because of the topography is limited and there is not a whole lot of room to build.

Serocki- Yes, for the same reasons.

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.

Condition has been met

Wahl: Yes, not only will it bring justice to this property owner, but it sounds beneficial to the neighboring properties.

Dolton: Yes, it fits within the neighboring properties and provides a benefit to the existing house by removing the holding tanks.

Dloski: Yes, I do not believe a lesser relaxation would be viable.

Serocki-Yes, this gives substantial justice to both of the property owners.

Ammerman: Yes, for all the reasons stated above.

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

Condition has been met

Dolton: Yes, this will be a positive for the neighborhood and it will not cause adverse impacts on the surrounding properties.

Dloski: Yes.

Wahl: Yes, the neighbors are all in agreement. It's a family area.

Serocki-Yes, for the same reasons indicated.

Ammerman: Yes, for all the reasons stated.

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.

Condition has been met

Peninsula Township
Zoning Board of Appeals
September 20, 2022
Lola Jackson Recording Secretary

Dolton: Yes, there is no change in use.

Dloski: Yes, this is already permitted by right.

Wahl: Yes

Serocki-Yes, this is permitted by right

Ammerman: Yes, the same as Serocki.

Dolton: all 6 conditions have been met and called for a motion.

Wahl made a motion and seconded by Serocki to approve Request No. 905.

Roll call vote-Yes: Ammerman, Dolton, Dloski, Wahl, Serocki passed unan

8. Approval of Minutes from August 16, 2022 Regular Meeting

Dloski moved to approve the minutes with a second by Serocki passed unan

9. Citizen Comments None

10. Board Comments None

11. Adjournment Dloski moved to adjourn the meeting with a second by Serocki. passed unan

Meeting adjourned at 8:05 p.m.