October 8, 2025

ZBA Packet Addition

October 2, 2025

Zoning Board of Appeals
Peninsula Township
13235 Center Rd.
Traverse City, MI 49686

Dear Zoning Board of Appeals Members,

We are writing regarding variance request No. 923 for the parcel at 10602 Bluff Road that is scheduled for discussion at your October 8, 2025, meeting. The Watershed Center advocates for clean water in Grand Traverse Bay and works to protect and preserve its watershed. We generally oppose variances from water's edge setbacks because they threaten environmentally sensitive shoreline areas. We firmly believe rebuilding the structure at 10602 Bluff Road is a dangerous endeavor in that Great Lakes water levels will continue to fluctuate and shoreline flooding will worsen. Researchers and practitioners agree that extremely high Great Lakes water levels will continue to intensify with our changing climate future. We respectfully offer the following for your consideration.

Water's Edge Setbacks Protect Water

Water's edge setbacks provide the opportunity for runoff from impervious surfaces to infiltrate before washing into water. Further, these setbacks help protect sensitive riparian vegetation that stabilizes shorelines, controls flooding, and provides fish and wildlife habitat. Setbacks from the OHWM are especially important on the Great Lakes due to extreme lake level variation, which is likely to increase in magnitude with a changing climate future. When structures are built too close to the Great Lakes, they may crumble into the water during high water years, destroying private property, and introducing pollutants into the lakes. Further, vegetation removal near the water reduces habitat complexity critical for native fish and wildlife. Coastal resiliency best practices, or those practices that help us withstand and recover from extreme weather and lake level conditions, call for building at least 100 feet back from the OHWM of the Great Lakes.

Peninsula Township's Variance Standards

Section 7.5.6, *Moving or Replacing Non-Conforming Structure*, of the Peninsula Township Zoning Ordinance, allows the ZBA to grant a variance if all standards in this section are met. In addition, the ZBA must ensure that all basic and special conditions of Section 5.7.3, *Variances*, are met. Subsection (4) of 7.5.6 relates to variance requests for structures to

encroach into the water's edge setback from the OHWM. Subsections (a) through (d) must be met for approval. We offer comments on each subsection as follows:

(a) provisions for stabilization of the shoreline so that the structure is not likely to be damaged by high water or wave action

This standard is clearly unmet. This structure was damaged by high water and wave action and any structure built in this area will be damaged by high water and wave action in the future. On page six of the agenda packet, the applicants state "the structure damage was caused by high water and wave action in the East Grand Traverse Bay of Lake Michigan." Photo's included in the packet further evidence the structure is too close to the water's edge.

The applicants state that sand was pulled by wave action resulting in compromised footings, foot drops, walls, and concrete slab. There is no reason to believe the grade beams and proposed stairs and decking above the existing concrete slab will not suffer the same failure. Further, the applicant states that "the concrete and seawall will maintain the required shoreline stabilization," though it appears that the concrete slab and seawall have not stabilized the shoreline in the past, leading to the current set of issues at the property.

High water levels that occurred in 2019-2021 were not an anomaly; records from the US Army Corps of Engineers prove that Great Lakes water levels are cyclical and that extreme high water levels occur every 7-10 years.[1] Further, the scientific community agrees that the Great Lakes will experience amplified water level extremes in the future. Irrespective of floodplain construction methods, including building structures on pilings or grade beams, damage occurs when structures are built too close to the OHWM of the Great Lakes. Ice can damage seawalls and pilings by causing cracks, misalignments, and overall instability through the expansion and movement of frozen soil or ice heaving pushing against the structure; even the largest and most stable steel reinforcement is damaged by high water and coastal flooding.

(b) there is no additional detriment to adjacent properties

We question if this standard is met. If the applicants rebuild the structure in the same location as requested, environmental degradation will continue to occur as captured in the photos included in the agenda packet. Building too close to the water's edge results in

[1] https://lre-wm.usace.army.mil/ForecastData/GLBasinConditions/LTA-GLWL-Graph.pdf

anthropogenic debris entering the water during high water years and intense storms, which affects all adjacent property owners.

(c) shoreline vegetation is existing or established consistent with the intent of Section 7.4.4 Removal of Shore Cover

It does not appear that this standard is met. There does not appear to be any substantial existing vegetation along the shoreline. Further, there is no evidence that the applicants plan on establishing shoreline vegetation. Further, a seawall, lawn area, and proposed waterward deck or patio area is not consistent with the intent of Section 7.4.4.

(d) *and sea walls will not be allowed unless it is determined that there is no feasible alternative*

It is unclear if the applicants have determined that there are no feasible alternatives to a sea wall.

Peninsula Township clearly understands the risk of building too close to the OHWM of the Great Lakes as evidenced by the special standards in Section 7.5.6, *Moving or Replacing Non-Conforming Structure* that relates to rebuilding in the water's edge setback. We understand the homeowners desire to rebuild in the current home's footprint but question whether the parcel is suited for a structure given its small size and environmental sensitivity. Thank you for your consideration.

Sincerely,

Heather Smith
Grand Traverse Bay WATERKEEPER®

KUHN ROGERS

October 7, 2025

Peninsula Township
Zoning Board of Appeals
13235 Center Road
Traverse City, MI 49686

via email- cpatterson@fsbrlaw.com
zoning@peninsulatownship.com

Re: McFall Variance Request

ZBA Members,

The Applicant respectfully submits this supplement to its variance application to clarify its position regarding the Township's wetlands provisions and the basis for the requested relief.

1. Preservation of Objection to the Validity of the Wetlands Ordinance

The Applicant continues to maintain that the Township's wetlands provisions were not adopted in accordance with the statutory requirements governing such enactments and therefore are invalid and unenforceable. All prior correspondence, memoranda, and communications addressing this issue are expressly incorporated herein and should be made part of the record.

Accordingly, the Applicant reserves all rights to object to the applicability or validity of the wetlands provisions and does not concede that a variance is legally required. The Applicant's participation in the variance process and submission of this request are made in ongoing good faith and in the spirit of cooperation with the Township but shall not be construed as acquiescence or acceptance that a variance is necessary or that the wetlands ordinance is valid or applicable.

2. Background and Basis for Variance Request

The Applicant purchased the subject property in reliance upon an approved land division that included an access easement and driveway extending from the south, as well as a drainfield easement, as shown on the survey approved and recorded as part of that division. The Applicant was provided a copy of the recorded survey at the time of purchase and was informed by the seller and/or the seller's agent that the division and access configuration had been approved by the Township. The Applicant proceeded with the transaction based on that understanding.

It has since been discovered, through communications between the Applicant's current counsel (Kuhn Rogers PLC) and Township counsel, that although the Township approved the land division with those easements in place, it informed the seller that access might be required from Bluff Road due to the wetlands ordinance. This critical information was never conveyed by the seller to the Applicant who has since invested substantial time and resources in reliance on the approved configuration and recorded easements.

3. Practical Difficulties and Topographical Constraints

The south side of the property is traversed by a wetlands area before rising more than 50 feet to the building plateau. The Applicant's engineers were directed to explore whether access could instead be achieved from Bluff Road. Their analysis concluded that such a route would require:

- Significant soil removal and grading, including switchbacks to manage the steep elevation change;
- Substantial tree removal and resulting environmental disturbance;
- Ongoing soil and erosion control measures; and
- Intrusion into the wetlands setback area regardless of alignment.

Thus, even a Bluff Road access would necessitate a wetlands setback variance and result in greater environmental impact than the proposed southern driveway.

4. Applicable Variance Standards

The dimensional and topographical characteristics of the parcel create practical difficulties that make strict application of the ordinance unreasonable and inconsistent with its purpose. Furthermore, even strict compliance of the conditions or standards for a variance can be modified to accommodate same, Section 5.6 of the Zoning Ordinance provides that:

> "Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such Ordinance, the Board of Appeals shall have the power in passing upon appeals to vary or modify any of its rules, regulations or provisions so that the spirit of the Ordinance shall be observed, public safety secured, and substantial justice done."

This provision expressly authorizes deviation where necessary to ensure reasonable use of property and to prevent hardships inconsistent with the ordinance's intent.

5. Environmental Oversight and EGLE Approval

The proposed driveway crossing from the south has already been reviewed and approved by the Michigan Department of Environment, Great Lakes, and Energy (EGLE), the agency with the technical expertise and jurisdictional authority to assess wetland impacts and mitigation. EGLE's

approval confirms that the crossing can be constructed in an environmentally responsible manner consistent with state standards. The Township should give substantial weight to EGLE's determination.

6. Conclusion

Given that:

1. The wetlands provisions are of disputed validity;
2. Strict enforcement would deprive the Applicant of reasonable residential use of the property; and
3. The proposed driveway alignment has been vetted and approved by EGLE as the least impactful alternative, the Applicant respectfully requests that the variance be granted. Such approval would uphold the spirit and intent of the ordinance, protect environmental and public interests, and allow the property to be reasonably developed for its intended single-family residential use.

Sincerely,

KUHN ROGERS PLC

Marc S. McKellar II
Direct Dial: (231) 947-7901 x106
msm@kuhnrogers.com

MSM

Gosling Czubak
engineering sciences, inc.

Engineers • Surveyors
Landscape Architects
Environmental & Drilling
Construction Materials Testing

September 11, 2025

Dean Adams, Owner
Bay Area Contracting, Inc.
970 Emerson Rd.
Traverse City, MI 49696

Via email to: dean@bac-tc.com

Re: **McFall driveway location and wetland impacts**
12839 Bluff Rd., Traverse City, MI 49686

Dear Dean:

As requested, we have completed a comparison of two potential access points for the above-referenced property and evaluated the potential impacts each alternative would have on wetlands and related natural resources. Our findings are summarized below.

Access 1: 33-Foot-Wide Access Easement (Parent Parcel, Tax ID 11-134-003-04)

Access 1 has been identified as the preferred access route for the following reasons:

- The driveway location has been reviewed and permitted by the Grand Traverse County Road Commission.
- The proposed access has been approved by the Department of Environment, Great Lakes, and Energy (EGLE, WRP#043808 v1.1).
- Impacts to mature trees and steep slopes are minimized by utilizing a portion of the existing farm access road.
- The alignment crosses the wetland and intermittent stream perpendicularly, which reduces the wetland fill area, limits disturbance, and shortens the culvert length required.
- The longer, shallower driveway slope improves accessibility for both the homeowners and emergency personnel.
- Construction will not require the use of retaining walls or steep grading to reach the homesite.

Access 2: Direct Access from the Subject Property

Access 2 was evaluated but deemed undesirable for the following reasons:

- The length of driveway required to provide suitable access for both homeowners and emergency responders would need to extend across nearly the entire width of the subject property and immediately adjacent to the wetland and stream. This would necessitate:
    - Removal of additional mature hardwood trees.

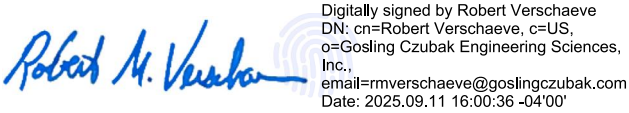
  - Extensive use of additional retaining walls and steep grading through hardwood areas and adjacent wetlands.
- Impacts to regulated wetlands could be greater than what has already been permitted by EGLE (WRP#043808 v1.1). Wetlands extend along the Bluff Road frontage, and additional disturbance to them could be necessary for this access scenario.

Based on this comparison, Access 1 offers a more responsible and practical option for providing safe access to the property while minimizing impacts to regulated resources.

Please let us know if you require any additional information or further analysis.

Sincerely,

Gosling Czubak Engineering Sciences, Inc.



Robert M. Verschaeve, P.E.
Senior Project Manager

Cc: Mark S. McKellar

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