

Peninsula Township
Zoning Board of Appeals
October 12, 2022 7:00 p.m.
Lola Jackson

**PENINSULA TOWNSHIP
SPECIAL MEETING
ZONING BOARD OF APPEALS AMENDED AGENDA
13235 Center Rd., Traverse City, MI 49686
October 12, 2022
7:00 p.m.
Corrected 11/15/22**

1. **Call to Order** by Dolton at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Elliot, Dolton, Wahl, Dloski. Absent: Ammeman. Jack Witte, Attorney via telephone.
Dolton: the absence of Ammeman raises a procedural question, whether the applicant wants to procedure with just an even number of members. This would lead to a potential split vote.
Deeren: I had absolutely no idea Ammeman would not be here.
Milliken (applicant): what would we do if it is a split vote?
Deeren: a split vote is a no vote and all of the six conditions for the variance need to be met. Milliken decided to proceed.
4. **Approval of Agenda** Dloski moves to approve the agenda with a second by Elliott.

approved by consensus
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None
7. **Business:**

1. Request No. 906, Zoning R-1C

Applicant: John P. Milliken Trust (95%), 7035 Peninsula Drive, Traverse City, MI 49686

Owner: John P. Milliken Trust (95%), 7035 Peninsula Drive, Traverse City, MI 49686

Property Address: 7035 Peninsula Drive, Traverse City, MI 49686

1. Requesting a variance from Section 7.5.6 Moving or Replacing Non-Conforming Structure. Requesting to convert an existing ten (10) foot by sixteen (16) foot 160 square foot attached boat storage area into residential living space.

Parcel Code # 28-11-325-078-00

Deeren: I need to correct my staff report to read Request 906 instead of 902.

John Milliken 600 Hidden Forest Trail: just for clarification have you all been out to see the property?

All board members indicated they had visited the site.

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Milliken: it is a storage area that is attached directly to the house. Our proposal is to make that into a living area with a washer and dryer and things like that. The stairway from the inside the house will go down there. It is an existing structure and we want to change the use of the space.

Dolton opened up to questions from the board for the applicant.

Dloski: there is a deck and is there anything under the deck?

Jack Klein, architect, 1451 Peninsula Drive: there is an existing foundation on 3 sides. At road level on one side it slopes down so the water side is totally open, creating access from the water side. Presently, with a flat deck on it and where the house attaches, we would like to take a stair from the house down into that area. If the deck were to stay, there is no headroom for the stairs. We need to add about a three foot wall on the top of the foundation and put a roof on that. We are not building any living space above the foundation level. The area can be accessed from the stairs going down or from the water side where there will be doors.

Dolton: currently the foundation is **at** grade?

Klein: yes. We want to use the existing foundation.

Wahl: so the existing foundation will be used?

Klein: at least the footprint of it. Much of this house is not in very good shape and a lot of the foundation elsewhere is cracked and bowing. The deck projects north where it is like 30 inches beyond.

Wahl: it sounds like some of the foundation is going to need to be replaced. Is that part of the original footprint or was that added on at a later date.

Milliken: I don't think any of us know.

Deeren: not much is available on the history of the property. I searched to see if there were any previous variances and there's hardly anything in the record card. The house was originally built in 1964. The zoning ordinance did not get adopted until 1972, so the house was built without a permit.

Wahl: if this was moved to the west, it would make it more conforming within the backyard side setback and the side yard setbacks.

Klein: to move this structure, there is not much legally conforming right now.

Deeren: most of the property is within the ordinary high water mark, so you are never going to get outside of the ordinary high waterline. You will always need to get a variance for anything you want to do to the property, so moving it to the west would make the property more conforming.

Elliott: I am uncomfortable with making suggestions to the applicant.

Deeren: I know, I agree.

Dolton: is any aspect of the redesign reducing the current non-conformity?

Klein: no, we were told early on we could build within the drip line of the existing structure.

Elliott: so is this within the drip line that you are talking about? (holds up map)

Klein: yes, that is the existing drip line up above.

Elliott: so this distance from grade is the same as it is currently?

Klein: it is slightly higher as there are presently 8 foot walls and we're doing 9 foot walls, but it's

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not beyond east west north south. The north elevation of the deck extends 30 inches beyond the foundation.

Dloski: so you are going to take the deck and the roof off?

Klein: we are certainly going to take the deck off. If the foundation is good enough, we will build it in the exact location.

Dolton opens it up for anyone who wishes to speak in favor of the applicant?

Jack Knol 7042 Peninsula Drive: I live directly across the street on Peninsula Drive (see letter attached at end of minutes). Knol is in favor of this house being restored through renovation within the confines of the existing drip line of the one story roof along with their request to allow a new laundry room to be located on the lower level into a 10 foot by 16 foot existing garage/storage structure. Knol had reservations of future projects that may block his view of the bay such as a garage addition. Knol also wants to be sure the drawings are accurate.

Dolton asks if there is anyone who wishes to speak against the application. Seeing and hearing none, Dolton ends the public portion of the meeting and brings it back to the board.

Dolton: I would like to reference something here that has some merit and significance and is the definition of “use”. Use is defined as “the purpose for which land or a building is arranged, designed, or intended or for which land or a building may be occupied”. My opinion is this covers 2 different concepts. The latter half “for which land or a building may be occupied” seems to point more toward agricultural use, is it residential use, is it commercial use and how the land is being occupied. The first portion is more finessed. This says the purpose for which “the land or building is arranged, designed or intended”. This seems to imply, at least my mind, that the existing structure on that lower level was designed as boat storage unit, it was not designed or intended to be living space and because of that I understand why it was published as a change of use. I just wanted to put that out there.

Dolton opens the meeting up for board discussion.

Dloski: that puts them in section 5.7.6 and the trigger on that section is it has to be less non-conforming than the previous structure. If they went under alternations or additions to a non-conforming structure, they don't have to meet that standard, which would be 7.5.5.

Dolton: an expansion.

Dloski: yes, is this an addition? This is a gray area. Putting them in a change of use puts them in to no-man's land. We are talking about the house structure, just this one room. You have the right to rebuild the rest of the home on the existing footprint.

Elliott: if someone were to come to you today to permit these plans with these setback issues, you would not be able to issue a permit. There would be a change in the height. How can they do that?

Dolton: it would be under 7.5.4, which states “nothing in this ordinance shall prevent the repair, alteration, reinforcement, improvement, or rehabilitation of a non-conforming building or structure or part thereof existing at the effective date of this ordinance that may be

necessary to secure or ensure the continued advantageous use of this structure. They are allowed to rebuild the home; however, here is where the trick comes in.

Witte: my understanding and Christina (Deeren) correct me if I am wrong. Section 7.5 is no longer in the zoning ordinance.

Deeren: 7.5.5 has been amended and is no longer in the zoning ordinance and was revised by amendment 171B. 7.5.5 is no longer in the ordinance as well.

Elliott: so as long as they are within our current parameters, including the height parameters they aren't inside the setback parameters.

Dolton: as long as they are not proposing a change in use from boat storage to a laundry and storage space.

Deeren: it kicks them out of that caveat for that section, so therefore they have to seek a variance in order to move forward with this specific portion of the structure. If they were to come to me with a building plan, as long as that was within the drip line and within the parameters of the existing structure, this could be done. In remodeling the existing structure, I could issue a permit because of 7.5.4.

Dolton: that was the information received from the township staff. As the zoning board, we have discretion to interpret the zoning as we think is appropriate. If we disagree with this analysis, it is still within our discretion.

Wahl: I think in this section, it differentiates between the residential use of the lot and of the structure, so the residential use of this lot is not changing. The zoning remains the same as R1C. Then you look at structure. You think storage changed to a laundry room and it's confusing. The ordinance does say needs to be less non-conforming and this is essentially the same footprint.

Dloski: if they want to go up, what prevents them from doing that?

Deeren: if you take what is there and change it into something else, this is a change of use. If they wanted to remove it, yes, I would give them a permit. If they wanted a replacement, this would be all right.

Wahl: they would still need to get a variance?

Deeren: most of the property is within the ordinary high water line and then the whole front portion of the building becomes the front of the side yard setback. They need to meet the side yard setback on the north line.

Dolton: because they are now proposing to build a structure above grade, can they use 3 feet of wall plus potentially 5 feet of roof peak, is that not a new structure within the setback? Is it something they can do?

Deeren: yes, essentially you are using the same foot print even though you are going up and that is why they are before you now. There is a flat surface there and if they want to go up approximately 90 feet, then they would need to come back to get a variance for this.

Dloski: if they go up is it making it more or less non-conforming?

Deeren: that is a really good question isn't it?

Witte: if the existing footprint is the same, the relevant inquiry is, does it increase the non-conformity, you could consider going up as increasing the volume of the structure within the required setback. Because the zoning ordinance is not clear on this point, there is some

discretionary interpretation that might be involved. The new section 7.5.5 might provide help in determining the overall intent of the ordinance. An addition can be built as long as it is not located within any required side yard setbacks or the ordinary high water mark setback. A change in height may not be permissible as it increases the non-conformity.

Elliott: I am taking the advice of the attorney and we should go with 7.5.6.

Dloski: if this makes it more non-conforming, then we cannot allow this.

Dolton: item number 2 under 7.5.6 "there is increased safety to the residents of the structure and to the traveling public on the road providing access to the parcel. We are verifying under which section we are going to discuss this.

Wahl: if you look at the term alter versus repair versus move and replace. They are using the same footprint, are they merely repairing things already there or are they actually replacing it. It sounds like they are tearing down a lot of it and replacing it. Nothing is being moved, but if they were moving this to the left, there would be no problem. The question is, is something being replaced.

Dolton: my take is this is a replacement only in they are replacing a boat storage area with residential use.

Elliott: can we go from 16' to 20' or do we go from 20' to 16'?

Dolton opens back up the public portion to allow Klein to make a comment.

Klein: so there is an existing foundation and whether it is in the side yard setback, it seems if we make it less non-conforming, this would be advantageous. If we move it 2' less toward the road it would make it more conforming and I believe they would agree to that.

Dolton: we are allowed to grant lesser variances.

Wahl: I have a question for Christina and the attorney. Let's say we do this tonight or is it something we can table and come back with.

Deeren: it is 100% up to you and the applicant.

Witte: you could table it and have the applicant come back pending a new application or the applicant could withdraw their pending application and just resubmit.

Wahl: I don't like putting conditions on a variance request.

Dloski: even if they moved it, there is still the issue of the increase in volume.

Elliott: given the setback situation, this is a real problem.

Dolton: when it comes to volume, I think of intensity of use. Is this going to become a bedroom for a growing family? This increases the intensity of use.

Elliott: are we talking 3' or 8'.

Dolton: the 8' is to create the roof, but I am going to assume most of the 5' is roof and not attic space. My understanding is they need this height to be able to walk down the stairwell into the laundry room. I understand you are creating a structure now above grade and was not there before.

Wahl: you are actually moving the structure away from the roadway, which improves the safety issue. They are always going to be within the ordinary high. I think we are looking a 7.5.6 no matter what. They're making it less non-conforming and they are increasing safety.

Witte: so far the discussion addresses the first two points in 7.5.6. Section 5 also requires the

applicant to meet all of the basic and special conditions as provided for all variances in 5.7.3.

Dolton: one of my issues is we are evaluating this as a use variance. We're applying potentially 7.5.6. I am not sure this will pass. If the applicant goes ahead tonight and is not granted this variance they have to wait a year to come back with the same variance request.

Deeren: correct.

Dolton: so we have 3 choices for the applicant. We can evaluate the request as it stands, we can state you cannot utilize the 2 feet of the existing footprint, or we can table this to the next meeting to give you time to ponder all of the above discussion we have had tonight and maybe come back with a more refined request.

Dloski: before you throw this out to them, why are we not proceeding under 7.5.4?

Dolton: in my mind the reinforcement, improvement, or rehabilitation proposes no change of use in the said building or structure. I believe we are proposing a change in the use of the structure from storage to a finished space allowing for a washer, dryer, refrigerator and a finished space.

Deeren: this was already vetted by our attorney who agreed the caveat in the last part of the statement did not apply to this particular situation and the best option was moving ahead with 7.5.6.

Dolton: we will give the applicant 5 minutes to tell us how they want to proceed. We are now in recess.

Dolton reopens the meeting.

Milliken: we were given 3 choices. The one about increasing conformity would be to lose the 2' is what we would like to go with tonight.

Elliott: could this be a condition added on to the request?

Dolton: yes, that is what we would have in mind when evaluating this request.

Wahl: so this would take them 12" forward?

Dolton: they would move it back 2 feet, which reduces the amount of the side yard setback. Elliott asks to ask the applicant. Dolton approves.

Elliott: in 7.5.6 item c there is a concern regarding shoreline vegetation. You have 2 very large trees. One is on the north side and one is on the south side. If you take this structure you are going to have to remove substantial portions of these trees. Do you have a plan for that?

Milliken: yes, there will be substantial trimming. Every roofer I have spoken to says we do not want those trees over the roof line.

Elliott: so that will essentially kill the trees.

Milliken: no. We are not going to knock them down and yes, there will trimming. We would only knock them down if they threaten the structure. So the trees are both a help and a hurt. Every builder or roofer I have had out state this as a potential problem. I tell them I want to keep the trees for as long as I can.

Elliott: do you have a plan to deal with the shoreline vegetation that exists as you are in the high water mark?

Milliken: no one really knows about Mother Nature and future potential outcomes. The first

thing we did after buying the property was put up an expensive seawall. We got all the required permits from the various agencies. Putting in the seawall has made a huge difference, even though the water has dropped this year. Literally when we bought the water was coming up to the windows during the high seas, so the sea wall has been invaluable.

Dolton: any other questions from the board for the applicant?

Dolton: I will entertain a motion to consider and evaluate variance request 906 with the condition the eastern section of the boat storage unit be converted to residential use and be pushed back 2 feet toward the west. This will reduce the square footage and it will move the foundation back 2 feet from the road. This board needs to evaluate this using 7.5.6 and additionally is subject to the 6 basic conditions.

Wahl: moved to consider and evaluate variance request 906 with the condition the eastern section of the boat storage unit be converted to residential use and be pushed back 2 feet toward the west. Seconded by Dloski.

Roll call vote: Yes-Dloski, Wahl, Dolton, Elliott

passed by consensus

Section 7.5.6 Moving or Replacing Non-Conforming Structure: The Township Zoning Board of Appeals may grant a variance for moving or replacing a residential structure on a legal non-conforming lot so that the continued intensity of residential use of the lot is substantially the same as in the pre-existing structure, provided all of the following are met:

- (1) The moved or replaced structure is less non-conforming than the previous structure;
- (2) There is increased safety to the residents of the structure and to the traveling public on the road providing access to the parcel;
- (3) Safety and substantial justice is achieved;
- (4) If the variance allows the structure to encroach into the setback from the Ordinary High Water Line, conditions of approval shall include:
 - (a) provisions for stabilization of the shoreline so that the structure is not likely to be damaged by high water or wave action;
 - (b) there is no additional detriment to adjacent properties;
 - (c) shoreline vegetation is existing or established consistent with the intent of Section 7.4.4 Removal of Shore Cover ; and
 - (d) sea walls will not be allowed unless it is determined that there is no feasible alternative.
- (5) In addition to (1) through (4) above, the subject parcel shall also meet all of the basic and special conditions as provided for all variances in Section 5.7.3. **(REVISED BY AMENDMENT 176B)**

Deeren: I am going to do the basic conditions on 7.5.6. 1. The moved or replaced structure is less non-conforming than the previous structure.

Dolton, Dloski, Wahl- yes.

Elliott-no- the minimal reduction in non-conformity with the move of 2 feet does not offset the increase in volume represented by the height.

Deeren: 2. there is increased safety to residents of the structure and to the traveling public on

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the road providing access to the property.

Dloski: yes, this is true because they are moving it 2 feet. This will improve the property and increase the safety from the road.

Elliott: no. I believe moving this above grade increase the volume and increase the non-conformity.

Dolton: yes. I believe moving the structure 2 feet to the west makes it safer from the roadway.

Wahl: yes, for reasons already stated.

Deeren: 3. Safety and Substantial justice is achieved.

Elliott: no, for reasons already stated.

Wahl: yes, taking it away from the roadway and increasing safety. The structure does not look safe and this will increase the safety.

Dolton: for the same reasons Wahl stated. The footprint is not expanded.

Dloski: moving the structure back 2 feet from the road is desirable and they are using the same footprint.

Deeren: 4. if the variance allows the structure to encroach into a setback from the ordinary high water mark, conditions of approval shown must include...

Dolton: I am going to raise a question before you read those. The variance requests for a change in use. I don't think these impacts the encroachment from the ordinary high watermark. There's no change in the encroachment.

Deeren: we need to read all of the items under 4 (a,b,c,d). a) provisions for stabilization of the shoreline so that the structure is not likely to be damaged by high water or wave action: b) there is no additional detriment to adjacent properties: c) shoreline vegetation is existing or established consistent with the intent of Section 7.4.4 Removal of Shore Cover: and d) sea walls will not be allowed unless it is determined that there is no feasible alternative.

Dolton: yes, I believe this meets all of the requirements under section 4. Stabilization for the shoreline has already occurred with the sea wall under appropriate permitting. There is no additional detriment to the adjacent properties. Shoreline vegetation exists and is being managed appropriately.

Wahl: yes, for all the reasons Dolton stated and they are not changing the foundation in any way.

Elliott: yes, for the same reasons as Dolton and Wahl stated.

Dloski: yes, especially as there is no additional detriment to the adjacent properties. The neighbor to this property saw it would create an improvement to his property and the surrounding properties.

Dolton: the variance passes all of the requirements except item 5 under 7.5.6. We need to go through the 6 basic conditions. I will entertain a motion for request 906 be considered with the condition the eastern section of the boat storage unit request to convert to residential use be pushed 2 feet toward the west. This will reduce the square footage and will move the

foundation 2 feet further from the road.

Wahl makes the motion with a second from Dloski.

Roll call vote: Yes-Dolton, Elliott, Wahl, Dloski.

passed unan

Deeren now reads the 6 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.

Dolton: yes, the property is the same as when the applicant purchased it and it was legal non-conforming at the time and he is not increasing the non-conformity, but is in fact reducing non-conformity.

Dloski: yes, for the same reason Dolton stated

Wahl: yes, for the reasons stated by Dolton

Elliott: no, the circumstances or physical conditions and the change of use is for desirability

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

Dloski: yes, this is a little bit more difficult in my mind, but I am still voting yes due to the unique situation and the nature of this particular property.

Elliott: no, same reason as due to desirability

Wahl: yes, this property was in disrepair when the applicant purchased it and something needs to be done with it. They are not changing the foundation. They are building something on the existing foot print and are actually improving the property. They are making the legal non-conforming property more conformity based.

Dolton: yes, for the reasons Wahl stated.

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.)

Dolton: yes, this will be in strict compliance with these setbacks

Wahl: yes, they cannot comply as the whole structure is legally non-conforming and are within the ordinary high watermark. They could not do anything with this property if they had to strictly comply with the existing setbacks.

Dloski: yes, for the reasons stated by Wahl and Dolton

Elliott: no, strict compliance will not prevent the permitted use. This represents an increase in the non-conformity, not a restriction from a permitted use.

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.

Dloski: yes, I believe this will do substantial justice to the applicant. This property is encumbered by non-conformities and the only way it can be utilized is with a variance. If this variance is approved, this allows a reconstruction to the shed and to the setback that they have agreed to.

Wahl: yes, this is a piece of property previously was in foreclosure and it has been sitting there for several years. Something needs to be done with it. The shed and deck are in disrepair. This will do substantial justice to the applicant and the surrounding neighbors.

Dolton: yes, this will be substantial justice to the applicant. If this was a conforming property you would have every right to reconfigure that space in any way they saw fit. I believe this is reducing the non-conformity.

Elliott: no, it is not necessary and is still an expansion and increases the non-conformity.

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

Ashley: yes, this will increase the enjoyment of the property and the impact to the neighbors is positive

Elliott: no, I think this increases the non-conformity and the setbacks. This is a very sensitive area on the water. This house could be made desirable and livable without expanding these non-conformities.

Dloski: yes, it is clear in my mind this will not cause adverse impacts to surrounding property. As evidence tonight we had a gentleman speak in favor of the variances. I think if this building is repaired and occupied it will increase property values in the neighborhood.

Dolton: yes, I believe what they are proposing is reasonable.

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.

Dolton: yes, a laundry room in a residential home is a use by right.

Dloski: yes, a laundry room and shed are residential uses and is consistent with the use of the house.

Elliott: yes, permitted by right.

Wahl: yes, for the reasons stated.

All 6 conditions must be met for us to proceed. Dolton calls for a motion.

Dloski makes a motion that all of the conditions have been met and that the most eastern wall of the requested change of use from a storage shed to a living space and the eastern wall has to be moved to the west by 2 feet with a second by Wahl.

Roll call vote: Yes- Elliott, Dolton, Wahl, Dloski

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Deeren: you have one year from today to complete this variance work as requested. You can come back and ask for an extension before the year is up, but not after it expired.

9. Citizens Comments- None

10. Board Comments

Dloski: the planning commission had a joint meeting with the town board and the planning commission voted to approve zoning ordinance amendments.

Deeren: the town board then approved it that night, so they are moving forward.

Elliott: I thought tonight was a very important meeting and many important things were said. It is our job to hear these variances and to drive the changes and evolution of the zoning ordinance. I feel restricted by certain language that perhaps needs to be changed.

Deeren: these are the types of issues I have been trying to clean up for the last 7 years. This is the most non-conforming place I have ever been. This place is unique and there is no way to make that go away.

Dloski: we need to make our decisions uniform.

Deeren: ironically you were dealing with this.

Wahl: you have to give meaning to words and when you do that in plain language if they are not defined within the ordinance. When you are looking at repair, alter, remove, replace, we have to look in plain language what those words mean because they are not defined within the ordinance.

Elliott: definitions are vital and this is why they are at the beginning of every zoning law.

11. Adjournment Dloski moved to adjourn the meeting with a second by Wahl. **passed unan**
Adjournment at 8:30 p.m.