

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

13235 Center Road, Traverse City, MI 49686

October 15, 2019, 7:00 p.m.

1. **Call to Order** Soutar calls the meeting to order at 7:00 p.m.
2. **Pledge**
3. **Roll Call of Attendance** Wahl, Dolton, Soutar, McBride, Couture, Deeren, Director of Zoning Township Attorney Greg Meihn also present
4. **Approval of Agenda** Couture moved to approve the agenda as presented with a second by Dolton.

PASSED UNAM

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

A. Request No. 881, Zoning R-1B

Applicant: Richard Cunningham, 9617 Peninsula Drive, Traverse City, MI 49686

Owner: Richard Cunningham, 9617 Peninsula Drive, Traverse City, MI 49686

Property Address: 9617 Peninsula Drive Rd., Traverse City, MI 49686

1. Requesting a variance from the required thirty foot front yard setback to a twenty foot front yard setback in order to construct a twenty foot by twenty-two foot garage.
2. Requesting a variance from the required fifteen foot side yard setback to a six foot side yard setback in order to construct a twenty foot by twenty-two foot garage.
3. Requesting a variance to exceed the percentage of lot coverage from the allowed 15% to 16.80%.

Parcel Code # 28-11-415-008-00

Deeren read the request out loud.

Richard Cunningham, 9617 Peninsula Drive

I bought this lot in 1972 and brought the print to the zoning board with the layout of the house and garage. The man looked it and said, "Your drain field has to be larger than normal because of the soil. The drain field will include an area where the garage is to be located but within two to three years the sewer will be out that far and you can have your garage. That was in 1972. I thought I could put up with the winters for two to three years without a garage for a few years. But it is much more difficult now that I am in my eighties, and I will do whatever I have to do to get a garage. Thank you.

Soutar: Would anyone else like to speak to this issue?

David Bush, 9635 Peninsula Drive: noted that he has been neighbors of the applicant for more than 30 years. The Cunninghams have been stalwarts for Peninsula Township all these years and have looked after the township and all its progress. Excellent people. We are totally for Dick and Julie to have a garage so they can stay here for the winters. Nobody can do it without a garage in the wintertime, especially when you get to Dick and Julie's age. They need a garage in order to be able to stay in the house year round. Thank you very much.

Soutar: Is there anyone who wishes to speak against the applicant?

Deeren: read a letter from Randall and Sharon Freeman, 9600 Peninsula Drive. We live across the street from where variances are being requested to build a garage. We agree with granting the requested variances. Thank you.

McBride: Is there any information about why he would be able to build three or four years later?

Wahl: at that time there wasn't any ordinance against it. What he's meaning on the drain field is that you need the ground to settle before you can pour concrete on it. But there was no zoning at the time. In two years you could pour over the drainage field, once it settled.

Cunningham: yes, that was it. Obviously I can't remember the name of the individual who was on the board who was in charge of it, but what he said was that within two or three years, the sewer would be out that far, and then you could have your garage.

Wahl: you are hooked up to the sewer currently?

Cunningham: we don't have a sewer. If we had a sewer, we wouldn't be here.

Soutar: Is the existing field still an active field, where the garage would go?

Cunningham: No.

Deeren: Back then, there might have been talk about a solution but then it never went through.

Cunningham: The drain field is even larger than what I would have needed. I had people come out and check it. In fact, once I was just going to pump it out and the man said all right, but it isn't necessary.

Soutar: Let's go around and look at this.

Couture: I always look at these variances as being there for a reason and try to keep the ordinance without exceptions unless there's good reason for it. Just as a general overview, the lot existed and construction existed prior to zoning. It is kind of an odd lot. I can see that they should have a garage and cannot have a garage as things stand. As far as impeding the current ordinance, I am inclined to think this is a reasonable use of the property to add the garage. I am struck that this is probably a good use of a variance.

Dolton: In general, I agree. In looking at the lot and driveway and house, it's pretty clear it makes a lot more sense to put the garage on the end of the house instead of reconfiguring or shrinking the septic field and putting it on the other side. I would come to us for a variance as well if I were in their shoes. I have one correction to the staff report. On the second page, on staff comments, it looks like a holdover from a prior case.

Deeren: I'll strike that.

Dolton: I'd like a little clarification on this. Say it conforms to standards but the one below it says yes.

Deeren: This was an error and should read no, does not conform to the standard.

Dolton: In general I understand the need for a variance.

McBride: I went over some of the basic conditions. They built the house themselves before zoning. I wonder about some of the advice he got then, information that we don't legally need to take into consideration even though I do think it's important. The township isn't held to the advice that was given in 1972. I think a little about justice. Yes, it would be justice to him to get a garage. Is it justice to give variances to people to build outside their lots? Maybe that wouldn't be justice to neighbors to allow people to regularly build outside the size that's permitted. Also, if it's allowing him to use his house his property, that's something, but he has been using it a long time without a garage. These are a few sticking points for me, but I do think you look at who the person is as well and that this would allow him to use his property. These are the things I'm thinking about.

Soutar: I looked at maybe putting the garage on the north side but with the septic there that's obviously not a viable choice. I looked at the distance for the walkway. You've constrained that down to probably two to three feet off the width there in the front and adding it to reach the deck on the other side. You're cutting off some windows in the front which is obviously unavoidable. The last item I looked at is the side setback on it because I'm very much in favor of making sure any equipment that needs to get on the side yards can get through to the back side of the house. I personally think 10 feet is about the minimum size to guarantee access. There is a steep slope. As a geographer, it's going to be fairly steep getting down there, so maybe that isn't so important in this case. There's nothing next door; it's like an open park with no houses on the south size but I still like to see 10 feet so that the access equipment is at least available if fire or other people need it. Within that particular construct, I noticed that a 6-foot side yard setback, it's actually 6 foot 11 inches, but 6 foot 11 and 1/8 that you have here noted on it, which Christina has nicely rounded off so it's almost a full foot further away from the side yard lot line. On the other hand the roof appears to be one and a half feet, so the egress around that side is going to be added onto by another foot and a half. Maybe 8 foot would be the minimum that would allow about a 10-foot egress around the side yard lot line. So I would be in favor of moving is from 6 feet, almost 7 feet, to an 8-foot, which would be optional. I personally think an 8-foot minimum side yard setback is the minimum I'd like to see because of egress to the side yard lot line. That's the only qualm I have about the whole thing.

Wahl: Looked at the map. It looks like this is the only practical place to put it with the septic field there. Even if the garage had been part of the original plan, it would probably be nonconforming because there's no realistic way...You can't move the house further west even if this was contemplated in the beginning. When you look at the unique layout of this property, it's unlikely you could have built it at this size and not have the garage be nonconforming to our current rules. It gets into the question of the argument we've had of is a garage a right or not.

Soutar: At this point I will entertain a motion to approve this particular request.

Dolton: I'll approve the variance as requested subject to the basic conditions being met.

Wahl: I'll support.

Roll Call vote:

Yes – Dolton, Wahl, Couture

No – McBride, Soutar

Approved by 3-2 vote

Deeren: Polled the board regarding meeting the six basic conditions for variance request #1: Requesting a variance from the required thirty foot front yard setback to a twenty foot front yard setback in order to construct a twenty foot by twenty-two foot garage.

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

1. 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.

McBride, Couture, Soutar, Dolton, Wahl **all agree condition has been met.**

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

Soutar, Dolton, Wahl, Couture **agree condition has been met.**

McBride – **condition has not been met.**

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.)

Wahl, McBride, Couture, Dolton **agree condition has been met.**

Soutar – **condition has not been met.**

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.

Dolton, Wahl, Soutar, Couture **agree condition has been met.**

McBride – **condition has not been met.**

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

Wahl, Soutar, McBride, Couture, Dolton **all agree condition has been met.**

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

Deeren: Polled the board regarding meeting the six basic conditions for variance request #2: Requesting a variance from the required fifteen foot side yard setback to a six foot side yard setback in order to construct a twenty foot by twenty-two foot garage.

1. 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.

Couture, Soutar, Wahl, McBride, Dolton **all agree condition has been met.**

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

Dolton, Wahl, Soutar, Couture **agree condition has been met.**
McBride – **condition has not been met.**

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.)

McBride, Wahl, Dolton, Couture **agree condition has been met.**
Soutar – **condition has not been met.**

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.

Soutar, Couture, Wahl, Dolton **agree condition has been met.**
McBride – **condition has not been met.**

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

Dolton, Soutar, McBride, Wahl, Couture **all agree condition has been met.**

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.

Couture, Wahl, Soutar, Dolton, McBride **all agree condition has been met.**

Deeren: Polled the board regarding the six basic conditions for variance request #3: Requesting a variance to exceed the percentage of lot coverage from the allowed 15% to 16.80%.

1. 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, Wahl, Soutar, McBride, Couture **all agree condition has been met.**

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

Couture, Wahl, Soutar, Dolton **agree condition has been met.**
McBride – **condition has not been met.**

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.)

Couture, McBride, Wahl, Soutar, Dolton **all agree condition has been met.**

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.

Dolton, Soutar, Couture, Wahl **agree condition has been met.**
McBride – **condition has not been met.**

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

Wahl, McBride, Dolton, Soutar, Couture **all agree condition has been met.**

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.

Couture, Wahl, Dolton, Soutar, McBride **all agree condition has been met.**

Deeren: Per basic conditions, which have all been passed, the request is approved.

8. Approval of Minutes from September 19, 2019, Special Meeting

Board: Where are the minutes?

Deeren: There aren't minutes here? Then we can't approve them.

Board: Discussion on when to approve the minutes, when the next meeting will occur, and whether the minutes can be approved at a special meeting.

Meihn: Yes, they can be.

Soutar: Will entertain a motion to defer these minutes until the next meeting.

Deeren: That will be December 17 as of right now, if I have any cases.

Meihn: You can have a meeting for the purpose of approving minutes. That's not necessarily a bad thing.

Action-Motion Couture moved that the minutes from September 19, 2019, be deferred until the December 17 meeting with a second by Dolton.

Yes – Couture, Wahl, Dolton, McBride, Soutar

PASSED UNAM

9. Citizen Comments

Richard Cunningham, 9617 Peninsula Drive, Traverse City, MI 49686

I am certainly pleased to hear the outcome of this because I love the place. I've loved it since 1972 and all the way, and it's going to be much more delightful in the winters with a garage, so I appreciate it.

Soutar: a garage is a right you have as a property owner.

10. Board Comments

McBride: Is there something that's written that says a garage is a right? I feel like that's a strong statement, and if that's true, I'd like to read it somewhere.

Meihn: It is not true. A garage is deemed to be an outbuilding and there is no automatic right to it. That's why we go through those elements that we just went through.

11. Adjournment

Wahl moved to adjourn. Couture seconded.

PASSED UNAM

Adjourned at 7:31 p.m.