

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

13235 Center Road, Traverse City, MI 49686

October 20, 2020

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** Rowlett, McBride, Soutar, Dolton, Couture, Deeren-Director of Zoning, Meihn, Peninsula Township Attorney
4. **Approval of Agenda** Dolton moved to approve the agenda. Second by Couture. **Passed Unam**
5. **Conflict of Interest** None
6. **Brief Citizen Comments – for items not on the Agenda** None
7. **Business**

1. Request No. 883, Zoning R-1B

Applicant: Monte R. & Nancy L. Tuffs – 7447 Cloudberry Lane N.E., Belmont, MI 49306

Owner: Monte R. & Nancy L. Tuffs – 7447 Cloudberry Lane N.E., Belmont, MI 49306

Property Address: 15861 Birch Drive, Traverse City, MI 49686

1. Requesting a variance from the required sixty (60) foot setback from ordinary high water to forty-four feet in order to construct a twenty (20) foot by twenty-five (25) foot storage parking structure.
2. Requesting a variance from the side yard setback of fifteen (15) feet to four (4) feet on the southerly property line.

Parcel Code # 28-11-560-020-00

Monte Tuffs 15861 Birch Drive

We have a 25 year old driveway and over time it has been moving to the south and caving in. The parcel is a small lot of only .29 acres. The people who owned the property before us did not do much to maintain the driveway and we want to replace the driveway. We also want to remove a shed that is on the property line. There is not much storage room in the shed, so we would like to build an underground storage structure that is 20' by 25'. This would increase the parking area and give us a place to store kayaks and jet skis. At the same time the retaining wall would be replaced. I have owned the property for 2 years and when we had it surveyed, it showed the shed was about 3' over the property line. This would be phase 1. Phase 2 would be to redo the landscaping and build several more retaining walls. This would be for the next time I come before the ZBA. Phase 2 would also include a path down to the water. My wife has been diagnosed with rheumatoid arthritis and she cannot walk down to the water. The path would

allow a golf cart go get to the water's edge for my wife. The entire project is going to cost somewhere around \$200,000. I am not looking to do anything along the shore line as the previous owners had the foresight to install rocks along the water's edge, which has eliminated potential problems. It is a steep property that needs some help. The setback difference brings it right up to the house and the hill I am trying to fix goes right over the lot line. We are going to tie it in on the east side. There is a gully that is slowly moving toward the lake. Between me and the neighbor, we should be able to fix that gully between the two properties.

Dolton: Given the new request is a structure, which increases the lot coverage, why is there no lot coverage variance in this request?

Deeren: When this variance was requested, I should have driven over to the property to inspect the lot coverage, which is already over the limit.

Dolton: So my next question is for Meihn. Given that this is already over the allowable lot coverage, how do we handle existing ordinance violations in light of a new request?

Meihn: This is something that needs to be investigated before buying a piece of property. This could be handled through the discussion here on how to fix the existing violations. You could rule on just this request and then the township would need to go about citing the existing violations and leveling the necessary fines and having items removed from the property that were put there illegally. This is a perfect opportunity for everyone to work as a team to bring this property into compliance. You could table this request and have the homeowner come back and ask for a new variance that would remedy these issues.

Dolton: This is in no way meant to be punitive to the applicant as he inherited these issues. The standards to approve a variance are rigorous and the chances of having this request approved are minimal with the current violations in place. I want to make sure you have a fair hearing, but I do not think that is possible with the existing violations.

Meihn: Christina, would you list the violations for the record.

Deeren: I went through the entire property file and the only items in the file were 3 variance requests. A variance was granted in 1980 and in 1984 to construct a new home and in both cases a home was never built. The third variance was granted by the ZBA in 1990 and the home was permitted by the Peninsula Township Zoning Administrator. The current violations are (1) approximately 570 feet of board walk that was installed without a permit by the previous owner of which the setbacks do not adhere to the zoning ordinance. (2) a shed 8' by 12' was placed on the property by the previous property owner without a permit and is in violation of the setback(s). The required percentage of lot coverage is 15%. The current percentage of lot coverage is 23.74%.

Tuffs: The boardwalk along the water would be gone, the shed would be gone, as well as the two decks. The drawing you have before you is an architectural drawing and no materials have been chosen. Concrete or pavers at grade level would not add to the lot coverage.

McBride: So there never was a variance to allow the lot coverage to exceed the 15%. Going forward, there would need to be a variance regarding the lot coverage.

Soutar: Even though this goes back 25 years, the peninsula building code was written in 1972.

Meihn: The choices to consider are: the applicant can resubmit the petition with the removal

of all the items. He could come back and apply for the lot coverage variance. If a variance is granted based upon a future action and that action does not occur, then the only remedy is through legal means. The better course of action is the applicant to meet with Deeren tomorrow and go over all the items to be removed before any construction begins. That which is illegal at the time it was done is still illegal now. There is no statute of limitations.

Rowlett: You and the neighbor to the south both share the issue with the widening ditch. How does this relate to the issue you have now.

Tuffs: We could back fill the ditch and then fill it with stone or gravel. The neighbor has already begun this process and I do not see any problem with us working together.

Deeren: Everyone within 300 feet of your property has been notified of this request, which is required by law. If you come to my office, we can rewrite the request and notify everyone again within 300 feet of the property. You can come back to our next meeting, which is November 17, 2020.

Tuffs: Would I need to pay another \$1,000?

Deeren: No.

Soutar: Is the property line to the north the one with the snow pole indicators?

Tuffs: Yes, that is the north property line. I had the property surveyed and four corners of the property are marked with rocks.

Couture: The boardwalk and the shed are not included in the lot coverage, is that correct? He is going to need a variance for the issue of the 15% lot coverage. We need to talk about the side yard setback that is part of the request.

Tuffs: In one of the drawings of the property it shows all of the setbacks.

Soutar: Thank you for your presentation.

Is there anyone wishing to speak in favor of this proposal? Seeing none is there anyone who wants to speak against this proposal? Seeing none, I will bring it back to the board.

McBride: So are we going to do these 2 variances tonight or are we going to table them?

Deeren: No, we cannot add anything to this request and he needs to come back with a rewritten request for a variance. My recommendation is to take out the items that will be removed and then add in the requested new items.

Rowlett: If we approve things with a timeline what occurs if items cannot be met within the time frame?

Deeren: If those items were not completed in a timely fashion, then he would have to come back and ask for an extension. A variance is only good for 1 year.

Soutar: To be fair, we need to let the applicant know now what items he needs to address before coming back to us next month.

Dolton: The purpose of the setbacks is one of safety and to allow people easy access to the property. Given the topography of the lot, I am not against the 4 yard setback.

Soutar: In looking at the conditions that must be met for a variance, I have trouble with a, c, and e. It would not be fair to have the applicant come back if these items are not going to be remedied. If we cannot approve it even if the zoning infractions can be addressed, he needs to know that right now.

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.

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

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.)

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.

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

f) 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: The request right now is less approvable than one that might come back to us and that cannot be decided without knowing the future numbers.

Couture: If we are taking the temperature of the board, I can approve this if the items that need to be addressed occur.

McBride: If we are looking at the conditions, a shed is a want and not a need. There are items that can be approved, but the property needs to be brought into compliance.

Deeren: We are going to go back and rewrite this proposal. We are not asking that he go out tomorrow and begin removing the deck and hiring people to do this work. I will meet Mr. Tuff out at the property.

Couture moved Request No. 883 be tabled to a date certain of November 17, 2020. Second by Dolton.

Roll call vote- Yes -Rowlett, McBride, Soutar, Dolton, Couture **Passed Unam**

2. Approval of Minutes from July 21, 2020 Regular Meeting

McBride moved the minutes be approved and Couture seconded.

Roll call vote- Yes -Rowlett, McBride, Soutar, Dolton, Couture **Passed Unam**

8. Citizen Comments None

9. Board Comments McBride wants to know if these meetings can be held on Zoom

Deeren: said the ZBA meeting is following how the town board is holding their meetings, which is in person right now.

Meihn: I am recommending that all boards be held via Zoom at this time. The legislature of Michigan is now holding their meetings via Zoom.

Deeren: There was a lengthy planning board meeting last night and a new zoning plan was presented, which will help resolve some of our zoning issues.

10. Adjournment

Peninsula Township
October 20, 2020
Zoning Board of Appeals
Lola Jackson Recording Secretary

Couture moves to adjourn with a second by Dolton.
Adjourn 8:13 p.m.

Passed Unam