PENINSULA TOWNSHIP

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PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
Special Meeting
November 10, 2025
7:00 p.m.

1. **Call to Order** by Dolton at 7:04 p.m.
2. **Pledge**
3. **Roll Call** Visger, Prescott, Dolton, Cowan-excused, Dloski-resigned, Patterson-Peninsula Township Attorney on Zoom, Jessica Shepard-Esquire Depositions Solutions
4. **Approval of Agenda** **Visger moved to approve the agenda as presented with a second by Prescott.** **Approved by Consensus**
5. **Conflict of Interest** None
6. **Brief Citizen Comments** **Chris Ostrowski 1010 Peninsula Drive-**I am here on behalf of Dean Adam of Bay Area Contracting (BAC), who are the builders on this project. I have worked with Dean for 8 years and I have never spoken publicly at a meeting like this. I have been a part of another ZBA in another county. I understand the difficulty and complexity of what you guys sometimes have to deal with and the timeframe in which you need to make your decisions. This ZBA, this procedure, the EGLE permit, I know has been going on for almost 2 years, maybe over 2 years that this process has been taking place. I have worked with Dean on over 60 projects, both remodels and new construction. The word that comes to mind is integrity. And how do you get that word, what does it mean to have that high honor of integrity? Part of integrity is what one hears in the statement of project complexity. How difficult it is to build houses like this. And this is not the first project. We have had big projects like this before. I believe it is community. I believe it is protecting his employees. How long is the tenure of employees that work at BAC for so many years. How do you get really good employees-you take care of them with health care, Christmas parties, and being able to sell multiple customers in the same family multiple houses. Meaning I sold the dad, I sold the brother, I sold the sister. In the construction world, that is almost unheard of today. Paying your bills on time is a huge thing in integrity. The thousands and thousands of dollars that Dean and Bay Area Contracting helped the Big Brothers, Big Sisters, donated to Catholic schools for years and have not advertised this on their website. They do this from the kindness of their hearts. BAC reps hockey and Traverse City Youth Soccer. I am proud of you. Keep kicking some butt and we are going to win this. Thank you.

Barbara Hansen 6438 Mission Ridge-the previous statement has actually nothing to do with this variance and if you want to see community, here is community.

Julia Healey 12871 Bluff Road-I share my driveway with Jane Boursaw, which borders on the north side of the property. I am grateful to have an opportunity to speak and for the board for taking action. I also want to report a member who reported on this issue recently received legal notice related to their coverage and I won't comment on the specifics, but I do think it is important that we as a community can speak publicly. My opinion, as a neighbor to this property, is that this board should consider the factual and regulatory implications of the applicant's actions, not just the plan submitted for review. You're very familiar with the Wetlands Protection Act. And as you know, regardless of if it is a temporary structure or permanent structure, any disturbance outside of anything that is permitted is not legal based on 303 of the wetland protection act. I also would like to read an excerpt from the letter sent to this board on October 7, 2025 by the applicant's legal counsel. Quote, "The south side of the property is traversed by a wetland 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 such a route would require 1. significant soil removal and grading including switchbacks to manage the steep elevation change, 2. substantial tree removal and resulting environmental disturbance, 3. ongoing soil and erosion control measures and 4. intrusion into the wetland setback area regardless of alignment. Thus, even a Bluff Road access would necessitate a wetland setback variance and result in greater environmental impact than the proposed southern driveway" End quote.

It is alarming to me to read that language and then witness the action taken because as I stated, my driveway is along the north side of that property and shares that hill that's currently being excavated. It makes me concerned if something can be said and sent to this board and then a different action appears to be taken. This makes me concerned about the proposed building work that is being done to mitigate potential risk of my driveway. I'm on an island up there. The Boursaw family and my family are on an island. There's no other emergency access point. So it makes me concerned if we see a pattern of saying and planning for one

thing and the action being taken is different. It makes me concerned and my family has experienced distress because of this. Thank you so much for the time. I'm grateful for the opportunity to communicate.

Katie Greir 12393 Bluff Road: hello, I am here as a neighbor. I'm certainly no expert on house building, nor do I claim to be. I'm a retired teacher who lives on Bluff Road and who walks and drives by this building site numerous times a week. I can tell you how heartbroken I am when I walk or drive by this building site because yes, you could say that I am a tree hugger and a lover of nature. When we built our house on Bluff Road 7 years ago, the architect and builder we were working with asked us where we wanted to build on our site and we were considering moving our home back against the woods, which would involve tree cutting and cutting into the slope, or we could move it further to the east, closer to the road. The builder and architect said that you can either work with nature or against nature when designing and building your home. And our choice was we wanted to work with nature. And they said that was a good choice. Your neighbors will probably be much friendlier and happier with your decision. And they were right. Our neighbors up and down Bluff Road are wonderful and they're good neighbors and have become good friends. And what I want to say is that neighbors and community are worth a pot of gold. Thank you.

Jim Linsell 13581 Bluff Road: thank you for heading this information sharing meeting. With great curiosity I'm here to ask some questions. I would like to know when did the soil erosion officials visit the

site? When did the drain commissioner visit the site, when did the permit office visit the site? When was the first time an official visited the site? And what precedent
does this set for future construction? Thank you.
Pat Sharpnack 12895 Bluff Road I didn't know whether to speak now or after because I have hopes answers will be given to the questions and concerns I have. One of them is they've created a road north of the creek, which is very viable to put huge trucks on it. And I question why can't that stay the permanent road? That way we don't have to disrupt the creek, where they want to put a 35-foot culvert. I have been up and down that creek many times. I don't know if there's 35 straight feet in that creek because it's so meandering. If you put a 35-foot culvert in it, you're going to straighten it out, which is disrupting the correct flow of that creek. So, I'm hoping that answer will get through today. Thank you.

7. Purpose of Special Meeting:

A. Discussion on variance request 927 regarding compliance with approvals

Applicant: Bay Area Contracting, Inc, 970 Emerson Rd, Traverse City MI 49696
Property Owner: Roger and Kelly McFall, 5484 Pinnacle Ct, Ann Arbor, MI 48108
Property Address: 12839 Bluff Rd, Traverse City MI 49686
Parcel Code #28-11-134-003-03

1. History/Status Presentation by Township Staff
2. Applicant Presentation
3. Discussion/Deliberation/Decision by Zoning Board of Appeals
4. Next Steps

Dolton: Kopriva, the zoning administrator is not present. Chris Patterson, the Peninsula Township attorney, will be standing in for Kopriva in terms of introducing the purpose of this meeting.
Patterson: good evening, everyone. I certainly will try to give you a little bit of an overview. Just to remind everybody for purposes of what exactly transpired in the variance approval and then I want to give some background since I was involved post approval on the variance application that brought us back this evening. If we all remember the original variance was submitted on the Bluff Road 12839 by the Mcfalls and that specific request relates to Section 7.4.7(A) and 2.
I bring that up because it's important to recognize, at least for purposes of the zoning board of appeals, the specific standard that was at issue and the request was to construct an asphalt driveway within a wetland as well as the required 25 ft wetland setback. There was a staff report prepared by Kopriva, which did go over some questions related to missing documentation and the wetland regulations themselves. Remember that was early in the process, and we did receive information from the applicant's attorney questioning the preemption effect of the wetland regulations themselves. We did provide a legal opinion on that as well related to no conclusive case law. We had directed the zoning board of appeals to be able to proceed in applying its variance standards. In the original application process, you were provided findings as to those standards. Those were reviewed just to remind everybody for purposes of the meeting. You were looking at approximately six standards. The unique circumstances and physical conditions as to the property itself. It's not supposed to result from the property owner's actions themselves. Strict compliance with those wetland regulations would unreasonably prevent the permitted use. The variance does do substantial justice. There are no adverse impacts on the surrounding properties and then it doesn't permit any nonpermitted uses. You met on

October 8, 2025 meeting, which was scheduled as a public hearing as well. There was certainly an applicant's presentation. You were able to ask questions and you determined to grant the variance based on findings provided there. In my understanding one of the key pieces and the reasons that we're here for this status/compliance meeting has determined the extent that the proposed or the now constructed temporary drive is consistent with or otherwise undermines any findings that you have concerns with and what type of remedial action with the zoning board of appeals can consider in moving forward. In the prior position, just remember the applicant's position in that October 7th letter where they represented concerns about the way the property was purchased, the approved land division that already had an access easement that came in from the south. They had provided survey information that was presented and in one of your packet updates because this was scheduled for two different meetings before you were provided an engineer's letter. You also received record information related to that sort of focused on the viability of whether it was practical to have an alternative direct access off Bluff Road. At the October 8, 2025 meeting, you asked how various releases came out related to whether the driveway could be located in alternative sites and there were conversations about what impacts would happen as it relates to trees or other pieces for purposes of alternative design. Again, I pointed out those ordinance sections are a real question that you asked with the extent to which a structure could be located in your wetland regulations varying those to allow that construction that based upon a finding of those six standards being met, meaning that there was no self-grade hardship that it was not practical to have an alternative design. The vote gets taken. I would say approximately 20 or 21 days or right around October 29th, 28th, right around there. We get notice construction equipment is mobilizing on the site. They ultimately had constructed and cut in a driveway in the process off Bluff Road coming from the north heading south making a switch back turn up toward the southeast portion of where your proposed foundation is for that portion of the house. We immediately contacted Mr. McKellar, who's the legal counsel for the applicant. I presume he's probably present and he was immediately able to work with us to get some additional information that it was going to be a temporary construction drive. The trees that were cut were extensive as it related to that portion of the property but not entirely intended to be permanent or maintained. There were early conversations about ceasing construction to essentially determine the extent to which that driveway impacted the ZBA's prior variance and if it otherwise impacted what the township had also issued based on that variance which was a land use permit. In the early conversations with Mr. McKellar, we were gathering additional information. We were providing that to the township staff including enforcement officers, supervisor, and some other individuals involved. Mr. McKellar was nice enough to agree that he would get construction to cease for a temporary period, but we could sort it out. The concern arose from our observation in the township there was some continued construction occurring. A cease-and-desist letter was issued on November 5, 2025, just to ensure that there wasn't any continued work being done, that we could maintain the status quo, but we could arrange next steps and then following that November 5th letter indicated a couple of specific pieces that would lie ahead. The goal was to then schedule this special meeting for the zoning board of appeals to determine the extent of that installation of the driveway from Bluff Road being created, whether the variance was at all impacted by that additional access that was made and how that access compares to any representations or findings that the zoning board of appeals either heard or made at that October 8th meeting. And then just to ensure all work would cease until we could conduct a compliance review. And that brings us to this evening. A couple things on evaluating the accuracy of any findings of the zoning board of appeals and next steps. One thing we've done in scheduling this special meeting everybody can participate in those that are here. I think notice is often a conversation that comes up at zoning board of appeals meetings. We typically

would schedule actions before the zoning board of appeals for a public hearing, but this evening is an initial meeting to determine and within compliance of the open meetings act the extent to how the zoning board of appeals wants to proceed. I see a couple of things that would lie ahead for the zoning board of appeals related to the specific barriers which is one where we allow an opportunity for the applicant to present and for you to deliberate and ask any questions of the applicant you desire we can certainly confirm you're comfortable with what's been issued and the information you were presented on October 8, 2025 and this evening. The second item is we certainly can schedule it for an additional special meeting if you determine during this evening that there's any additional information that you would like to receive whether that's from the applicant or from any direct township staff. And then the third is since the zoning board of appeals does issue variances through a public hearing process, we're not recommending that action could be taken this evening. But if the zoning board of appeals is left with the conviction that you think that's the next step, we would notice that consistent with the same process for which you noticed the original variance hearing. We would do 15 days mailed notice etc. So that's something that we would need some direction as staff from the zoning board of appeals to take those additional steps. I'm happy to answer any additional pieces. I know for purposes of just serving the record, the zoning board of appeals members were provided an opportunity to view the site. My understanding is many of you have personally viewed the site and there's also been some photographs provided so you have a pretty good idea of the actual physical changes to the site. Since Kopriva couldn't be present to the extent if it comes up, I did discuss with her application materials received, what she has on file, and the information as to what her involvement was as it relates to the variance application and the presentation to the zoning board of appeals. That's the background time frame and how we get to what's set on your agenda for this evening.

Dolton: thank you. Any questions from the board for Patterson at this time? No. Okay.

I'm going to do a briefer summary of why we are here and then what we just heard. The zoning board is tasked with only one thing, and that is the review of a specific variance request. While this project entails a number of issues and a number of questions have been arisen, the only issue the zoning board itself can address specifically is the variance request that was put before us and approved at the last meeting. We're here tonight to hear from the applicant and discuss irregularities regarding variance request number 927, that was approved on October 8, 2025. The appropriate next steps as Patterson has outlined will be determined at the end of this meeting. To be specific, representations were made at the variance hearing that the placement of a driveway in a similar location as the now existing construction roadway would pose an extreme practical difficulty due to the terrain of the property and would be environmentally undesirable in comparison to the utilization of the existing easement and crossing of the wetlands. The presence of the construction roadway which does not touch the wetlands although it does enter at times into the wetland setback appears to contradict these representations and we are here this evening to hear from the applicant regarding these representations. Now, before we do hear from the applicant, I want to quote from the minutes that were published with respect to the last meeting so we can be clear what I'm specifically referring to. We start off by saying with the topography it will have to be towards the south of the property when we were talking about alternative locations for the driveway as an alternative to crossing the wetlands through the easement. Access would have to be the south of the property. It will traverse almost the entire length of the property and it will still require a variance. It will be touching the wetland setback on the very southeast part of the parcel. That impact of removing hundreds of trees, removing and disturbing tons of soil on that beautiful bluff area does not seem to make a lot of sense. EGLE has essentially concluded the same

determination. Crossing the wetland perpendicular for that very narrow time is probably the least impactful. That is one statement. That statement was made by Mr. McKellar.
I asked specifically, is it fair to say this was a kind of issue that was brought up and Kopriva even included a memo in the packet for that reason? And that is the reason you have not applied to the road commission for a driveway off the public road because it is not a desired option. “Mr. McKellar, no, that is not really a feasible option. It is more impactful”. **Dolton**: that is what I meant. Going on Mr. McKellar states "The statute requires that you demonstrate there is no other feasible or prudent alternative to constructing in the wetland. Before you can even apply for a permit, you must show you've exhausted all other feasible and prudent alternatives to accomplish what you want to do. The project purpose in this situation was to build a house in the location noted. The only way to get there without getting a wetland permit was to go up the bluff, which is just not feasible. Then McKellar goes on to describe what feasible means under case law. **Dolton**: “even if you were to access this off the public road there would be a wetland encroachment. But this is implying you are going to go south to access the property. If you went north to access the property, you would not be encroaching on a wetland. Why is that not under consideration?” They describe why that would not be under consideration. Mr. McKellar then states, "If I may offer some clarity, this does not matter where we enter on the front edge of the road. The serpentine nature necessary to engineer the road to get to the top will keep touching the south creek lines to the setback. Even if there weren't any wetlands along Bluff Road, we would be touching every time we had to make our way up here along a zigzagging back”. Representation is to go on the south; they would have to zigzag up the bluff. I do not think the house's location changes the requirement that it would still zigzag across things. Mr. Dolski asked, "I cannot find that location on the map. I know we have not been talking about crossing here, but what about coming off Bluff Road right at this corner?" He was referring to the southeast corner. Mr. McKellar, you cannot get up there without going across this way across the property. He shows Mr. Dloski on the map. The elevation from here is 50 ft. It's likely the span of 60 ft. It's higher here than it is here. This is plateaued. You would have to zigzag this driveway back and forth. This has nothing to do with the house itself.

Dolton: These are examples of the representations made to the zoning board that drove the decision for the variance approval. This is why we're here. We have an issue with that based on the presence of the construction road, which does not meet the standards nor the representations that were made at the meeting. We are now ready to hear from the applicant so they can help us understand why those representations were made and why in fact a construction road went in the very location that was indicated to be impractical to place a permanent driveway.

Marc McKellar Attorney with Kuhn and Rogers 433 Eastern Sky Drive
I appreciate the opportunity to come here tonight and address these issues. We try to be as responsive as possible to Chris Patterson when he made the request and in addressing the concerns about representations. What I'd like to make clear is the representations made in my letter about the four concerns related to the access still stand true. We have several engineers here on the project that are all consistent with their conclusive letters about the access and what we were really speaking about during that meeting. I think what’s important to first understand is the temporary drive is not in the location that would be required to gain access to the house. There are several factors involved in that and the engineers can speak to that. That drive temporarily if it needed to cross where it currently is as it entered the property west. We have to serpentine around what would be the storm water control basin. There is not enough space between the wetland setback and the bluff for anything but the driveway. The fact we need a retention basin means the driveway has to go

somewhere that's either in the wetland or into the bluff, period. That's the beginning and end of the issue. It either has to be the road or the storm water control system. Furthermore, to go into the bluff, which would likely be in the north with this current entrance, the storm water control system would likely be northwest of that or west of the entrance and the preserved area behind the retaining wall of that bluff at the steepest point would be significant. A lot of the engineers speak the numbers. The representation that the actual drive if we're to come off Bluff Road that would be used to access the home would be more natural remains 100% true. There would be for the most part along the entirety of the wetland area an encroachment into the setback along Bluff Road portion going south to the creek portion going west before it finally turns towards the garage. We'll speak to the numbers but not only we have fill in that area maybe just shy of like 700- 800 yards. I'll let the engineers confirm that in the wetland setback area we have well over 100 yards of fill in the wetland just to achieve that. In doing so we would also have to cut more trees in that area to achieve access. Those trees would continue to be cut to the south from where the current drive is. The issue is the current drive comes and cuts through the bluff and enters right at essentially very south line of the property where the building's foundation is. That's not where the road would be. It would be further south and we come up around so that you could make the turn into the garage. That's where the impacts on the south side of property along the creek would be. Additionally, the portion where the current cut is through that ridge, which is south of the where the home's envelope would be, that ridge line would be reestablished. The elevations that exist on the ridge line will cut through to allow access to equipment would be reshaped and established up to the north, up to the house in the landscape. But I think the probably the most significant concern I would have is that drive would have to serpentine through to come up through there, the north side of the property would have significant removal in that steepest area of the bluff. All of that again remains 100% true that the impact of access off Bluff Road would be significant. Currently, where we're crossing is the only place along Bluff Road that isn't a wetland. EGLE would likely make us cross at that point and require that we traverse south and not cross the wetland south of where we couldn't access it. I acknowledge people may have had a different interpretation of what that might have been or envisioned something different than what was represented. But in looking at the entire site plan that was prepared, we showed on the plans to plan the access temporary drive cut in plans submitted to the township from sometime in March and July of this last year. The impacts of moving heavy equipment across the drainage ditch by the road commission would be certainly less impactful than having these trucks traversing the creek area. Just so everyone knows the creek sits several feet maybe10 ft below the grade and it's pretty steep. Rather than impacting those as you approach and come back made more sense to come straight across the bridge which exists along the road. I understand the concerns, but I am absolutely confident that the representations we make still ring true today and the engineers I think can speak to those details without question. Now the representation of trees is also true. There would be more trees than are being removed. There certainly be a lot more soils removed, but there were trees removed that were outside of the impact zone. We have a detailed plan that shows the area of impact in related to the house, the cutbacks and excavation. There were about six trees that were cut in front of the house. They're in the wetland setback area that the tree company was not supposed to cut. They were flagged. They weren't identified. Those will have to be replaced. And I committed to Patterson from the very first phone call that we would submit to a financial security to guarantee not only replacement of those trees, but there were some additional trees that were cut that were not north of the proposed retention walls. There were poplars and some other trees that were cut again by the tree company that were originally not supposed to be cut. There's a decision made given the height of the retaining walls which are significant that the size and the age of the

poplars and some of the other trees there they were so close to where the cutback would be it would be dangerous and not appropriate to have you know 15 ft or 16 ft or 20 ft of cut back and have a tree standing only four or five ft off of that had an enormous root system. It would be quite dangerous. Likewise, to the six or so trees that are in the setback along the bluff, we committed to having a restoration plan of replanting those with significant caliper, you know, 6-to-8-inch caliper trees and reestablishing that area. Interestingly enough, the mature canopy that existed there actually did not provide for a lot of ground cover and erosion at the ground level. This will actually provide an opportunity to put those grasses and other ground covers in and probably shore up that area better than it currently is. We can accommodate those issues which you know that's a mea culpa no doubt about it but we will put together financials together to ensure that those activities are done and we'll have the landscape team to be sure this is addressed. There was always, with the temporary drive, a restoration that is going to be restored with the appropriate landscape grading. But again it was temporary for the purposes of trying to have the least impact of the creek and have the least impact to the speed at which the project could be done due to weather I think the important thing is that the other than maybe some small portions where the entrance is off of Bluff, the road does not progress through the property the way it would be required to do if in fact it was part of the homes final design. Again, we greatly apologize if there was a miscommunication, if it was not understood what we were talking about, but the fact does remain true that it would have a much more significant impact to come off the road than it would off the easement area in its final form. Construction is not pretty. Excavation goes into margins and goes back, it's shaped, reshaped, and addressed. Everything in the project I believe was submitted to the township. The final grading plans, the elevations, the former grades were mirrored through the existing home or proposed home. The final elevations for all those were also there. We are here to answer any questions. We've assembled every person that's had a hand in this so that you can feel comfortable with what was provided. Any questions, we're ready to field them and get the right person up here to answer those.

Dolton: we're troubled by the fact that the construction road requires no switchbacks. Does it not actually enter the wetlands, does touch the wetland setback. It goes right to the lot. I walked there with Dave Sanger, our compliance individual enforcement officer. There was no zigzagging required. I'm a little stumped by your statement and it goes right to where the building site could be. Now I'm not saying it goes right to where you want it to terminate in terms of the garage location and I'm sympathetic to the issues that you face, but what requires the zigzag?

McKellar: well, again, regardless of where the home is up there, do you have the storm water control section? That storm water control basin takes up everything from the edge of the wetland setback all the way to the edge of the bluff. If that's the path where does the road go? It's either going in the wetlands or it's going in the bluff. That's all there is. It has to get around it, you know. And you could place it somewhere along there, but there's only so much space to do that. I would not say that the drive can accommodate where it's currently located. It would still have to be south to get the appropriate turn into the drive into the garage.

Dolton: but is that not driven by the plan for where the house and garage are located? The garage does not have to be where you're and I'm not unsympathetic, but I'm just trying to understand that. Are we being limited by the current design of the home?

McKellar: if the township had the right and legal ability to reopen a hearing and discuss those issues, it could be something that could be addressed. The fact is the site plan was provided. All the details provided and this isn't a hearing. I mean that if it had been brought up at the time, it's something

that could be accommodated and addressed and we could have answered questions brought back. I'll defer to Patterson, but I don't see how that's an issue for
today given this juncture, but anything's possible. You know, there could be where the garage could have been located, I guess, at a different location, but you still have to get up there. And I'm not sure the bluff is where the bluff is. I don't know how you still wouldn't have to traverse through that area to make a more impactful turnback. I just don't know where the space is. It's pretty narrow along the entirety of the track, especially because you have to come from the north to come down. Other questions?
Visger: you said that the drainage storm retention is the reason that the road couldn't go there primarily.
McKellar: that's one of the physical characteristics, not all of them, but it's one of the physical characteristics makes it more difficult and would make it less desirable. There are other reasons in addition to that.
Visger: developments get done all the time where retention is via underground storage. Can you address that?
McKellar: good questions to have asked at the variance meeting.
Visger: so, this is not applicable now?
McKellar: I don't think legally. This is not a rehearing. The purpose of this meeting is to establish what the next steps may well be and a rehearing is one of the options. We're not signing. I would like the attorney to cite the law and the ordinance that provides this authority to do because it doesn't exist in your ordinance and there's only it doesn't provide unless it exists in your ordinance and so again I'm not trying to be a turd here but that was the record those may have been good questions, but we provided plans to the town that say this is the plan, this is the proposal, this is the opportunity, this is what we believe to be the case. We've been permitted this. This is the option. I don't think we made any misrepresentations about that. Additionally, even if it was underground, we would still have to cut through the bluff to get up there, which we don't have to do now. That will be restored. We don't have traversing along the wetland setback, a much greater impact than it currently is. It's somewhat confusing to me that we would have hundreds and hundreds of feet of wetland setback violations and still several hundred yards of fill. Even if the retention's below, cutting through the bluff on the south side of the bluff for a width of, let's just call it 25, 30 ft., and that's supposed to be less impactful than the retention of that reshaping of that bluff back to its original state and having that area between the bluff and the wetlands retaining its natural, you know, features and characteristic, but that's not up to me. That's just that's what the case we were trying to make. I don't know that we made a misrepresentation and it's just hard for me to understand. I understand these questions more. I certainly understand now. I understand them productively at the ZBA hearing for the variance. But again, it can it be done? Yes, it's done. But I still think there's other things that would make it just more impactful. And again, the engineers can speak to that.
Dolton: other questions?
Visger: sure, but I think they're just going to get shut down.
McKellar: we'll try to answer every question. That's the purpose of the meeting.
Visger: what is the grade of the temporary road right now?
McKellar refers to unnamed person in audience. What was the question?
Visger: grade of the temporary road. 6% 8%? Slight enough to where a big truck can get up and down.
Unnamed person: just a load. It's rated for loader, but no trucks can go up that slope right now.
Visger: so, it would be suitable for a vehicle.

Unnamed person: They use a pick-up truck.
Dolton: how were you intending to get a concrete truck up there then?
Unnamed person: no concrete truck is going up there. A pump truck is being used on the temp drive and being pumped over to the house. So that way we don't have heavy equipment going over the stream. Everything's being done down below and being pumped up.
Prescott: does the construction drive need to be permitted as well? And is there a permit for it? What were the conditions and specification for that?
McKellar: a temporary drive as long as it exists and does not exist longer than a year is permitted by the road commission. They don't issue permits. They just authorize them to allow them to be. If it exists longer than that, then they take enforcement action. The location of it has to be identified. That's why it was identified with plans. That curve I think was built notified perhaps in July, built in July. The only portion that wasn't done was an existing kind track along the ditch there on the west side of the ditch. That's continued to be cut through but the road curb cut and all that infrastructure was placed this time.
Visger: is that a written document from the road commission or soil erosion or is that verbal?
McKellar: those are usually verbal. They may write it in the email, but they don't require a permit to be issued.
Visger: so, you did get permission of some sort.
McKellar: yes.
Visger: and you have documentation to that effect.
McKellar: we can get it, I'm sure.
Visger: you got an email letter or something of that sort, but specifically, about the temporary road, specifically about the temporary one. I'd like to see a copy.
McKellar: I'm sure we could supply whatever. I think we did tell Kopriva in July and if you'd like copies of it, whatever you need from us.
Dolton: any other questions for Mr. McKellar.
Prescott: so, this temporary drive might encroach on the wetland setback at some point, right? Looks like it does. I think it actually does. So why isn't that part of EGLE? Because if you look in that EGLE contract, it said construction pads, all roads placed in a wetland are not authorized and are not to be constructed unless given special permission. And that's not in there.
McKellar: the wetland we cannot that's the fence delineate in the setback as the 25 ft we are permitted to do. In the wetland absolutely, that's why they have us delineate along the creek at least in the wetland area, but we are allowed to be in the setback, I guess regularly.
Prescott: so, shouldn't that have been a variance that was applied for? It is still not within our current wetland ordinance, if you are in the setback.
McKellar: I believe this is a temporary drive now for this feature.
Dolton: Chris (Patterson), is the fact that it is a pervious structure as opposed to a non-pervious drive make a difference in this situation? Sounds like it might.
Patterson: based on the language, I don't know that it does. In section two, it says any development or modification within the wetland or wetland setback. And I thought we had had a conversation with Mr. McKellar on the phone about the fact that the temporary construction draft did partially impact the 25 ft. setback from the wetland. I wasn't aware that this would be an issue, but to me it's possible that that provision does cover any work within the 25 ft. setback. Just a couple things too because it's hard for me to interject during the conversation, but just to correct a few things for purposes of the record. I did indicate that I had talked to the zoning administrator related to what was in her file as it relates to receipt. There was just so everybody's aware the variance application comes after a first part that went

to the zoning office, which was a land use permit. The land use permit to build the single-family residence was reviewed. That review flagged the fact that the proposed access drive, the one that was requested for the wetland variance, would be in violation of the zoning ordinance and that to get that it was recommended they seek an application from the zoning board of appeals for a variance. So, they proceeded down that track. There was a set of plans provided to the zoning administrator at that time to review. We did go through those today and she can't find them, so in the last two weeks, Mr. McKellar has sent me information and then obviously our zoning administrator has information. Mr. McKellar did send me a set of plans that indicated they were submitted to the township. There's a second site sheet that has a very minor reference to a temporary drive on the north portion of the property that allegedly would have been submitted prior to August. It doesn't indicate the extent of the proposed grading that actually has been conducted. It indicates a cut off of the public road right-of-away from Bluff Road on the northside of this proposed parcel. The zoning administrator couldn't find that in her documentation today. I don't think that that's for purposes of the actual question before the zoning board of appeals. But just to the extent that the record's complete, I do want to note that the second piece related to a reference about discussing with the zoning administrator potential previous oral conversations about the actual temporary construction drive. I also checked with the zoning administrator about that. There was a conversation, an oral one in July about permitting a parking area. There were some parking spaces being used for purposes to gain access to the property. Those were discussed, but there was not a conversation related to the temporary construction drive and certainly not to the extent that was being proposed with the switchback and coming down the south side of the property into the wetland setback and then up to the house. We don't have documentation on file with the township as part of the land use permit. We did go check the county soil erosion control permits, which we now have. We also checked with the EGLE permits. That information was requested by the applicant's contractor to be included in the application materials to this zoning board of appeals. That was part of the application that was part of the packet that actually was produced to the zoning board of appeals for the October 8th meeting. If you look at those documents, there's no indication of a temporary construction drive. The EGLE permit does indicate no other work is permitted within the wetland. The only reason we raised that is I think I had asked Mr. McKellar about this and I think he confirmed it. We believe that there's a wetland delineation running alongside of Bluff Road as well. It is not clear to us the extent to which an EGLE permit would have been required for the temporary construction road itself. That information we looked at in the zoning file and just to make it complete, we don't have information indicating this temporary construction could be built neither in the original land use permit file or in this zoning board of appeals file. As to the count made related to legal authority for the zoning board of appeals, just so they are aware, the zoning ordinance does indicate the general powers that are provided to the zoning board of appeals for variances. There is a municipal doctrine which basically says you can take action with the exact same process you originally did. So, it is our position that a revocation hearing would be authorized under common law in support of the express authority in the zoning ordinance in the MTA. I was asked if we had a position on that, I think it is rare to have a revocation hearing for a zoning board of appeals on a variance that was previous issues. Certainly, I can appreciate if there's concerns about the record and if the applicant for this evening is limiting information that they want to provide at this record because it's only noticed as a special meeting, then I do understand the position. I do think it's a lawful action that can be taken.

Dolton: we will now move to board discussion. I do want to read into record at the request of Wes Cohan who is not able to be here. I do want to say that this is kind of a first for us as well. I've been on the zoning board for at least five years. We have never had a situation such as this. It's highly unusual. This is the letter from Mr. Cohan.

Dear John, I'm sorry that a prior commitment will prevent me from attending tonight's special meeting regarding ZBA 927 for property located at 12389 Bluff Road. In my absence, I ask that this letter be read into the public record. I am concerned that our township planning and zoning administrator and our township attorney will not be at the meeting. As it turns out, our township attorney is at the meeting. Coupled with my absence and Larry Dloski's resignation, more than half of the team that reviewed the ZBA 927 will be absent. I also acknowledge that is a concern and an undesirable outcome of tonight's meeting. I visited the site Friday, November 7th, and frankly was appalled. I can assure you this is not (in capital Letters) what I felt we were approving. In its current state, the project clearly is in violation of our wetlands ordinance as well as the easement approved by the property division committee. We were expressly told by the McFall's attorney and builder that a driveway could not feasibly be built unless it used the existing easement. Their argument was supported at a September 11th letter by Gosling Czubak Engineering Inc. in which it was argued that the first choice for building a driveway would not require steep grading to reach the home site. My visit today makes it clear that steep grading was always envisioned and that more importantly a driveway could be built in the area the ZBA committee was told it could not. The committee certainly did not envision clear cutting existing timber on the eastern slope of the property. The same September 11 letter from Czubak implied that the approved driveway would minimize the removal of mature trees. Instead, just the opposite has occurred. As you know, this project was troubled from the start. It is unclear if the land division committee ever visited the site. EGLE never visited the site. The landowner did not relay information about the wetland and driveway issues to the McFalls at the time of the purchase. I'm not sure any members of the ZBA committee were entirely comfortable granting the original variance, but given representations made by the applicant in the township's current zoning ordinances, we have little choice. At the very least, they would like to hear an explanation from the McFall's representatives of how we now find ourselves in the unfortunate position of having to issue a cease-and-desist order for further construction. I understand that the proceedings will be taped and I look forward to reviewing the discussion. Should the meeting be rescheduled, I am available on the 11th and 12th of this week.

Sincerely,
Wes Cohan
(Letter at end of minutes).

Dolton: I do have to say that Mr. Cohan's comments are similar to the reactions of the remaining board members, which is why we're here tonight. This is an unusually troublesome development and property. So, with that, I'd like to get to our discussion. I'm personally disturbed that we don't have full board representation absent Mr. Dloski as well as Kopriva here to provide additional background. I do want to say the ZBA is at somewhat of a disadvantage. The only materials the ZBA gets to look at is what is in the ZBA board packet. We do not get to see the other materials that are submitted to the township. As I understand it, certainly from Mr. McKellar's comments that is problematic that we perhaps did not have all of the relevant information. I do want to put that out there.

Prescott: I totally agree with that. I'm deeply disturbed that we're having this without our zoning administrator here and the fact that I feel like I don't have all the information.

Visger: There are inconsistencies and so forth. I do find there is reason to pause.

Prescott: I do understand the pressing need to have this meeting tonight. For both the applicant and the public.
Dolton: I do want to say that the board, none of us are attorneys. I'm not an attorney and Chris is not an attorney so we cannot discuss the legal grounds upon which we stand for any action that we take. That's why we have a staff attorney. So, the staff attorney has laid out various options that we can pursue tonight. I will lay those out for the board for our discussion. One is basically a conditional affirmation. In other words, we feel that what we've heard from the applicant satisfies our concerns about the variance and that we give basically say we're done at this point. That is one option. I'm not hearing that's kind of what we're thinking. Another option is a secondary special meeting which, at this point would allow both the applicant and the township to do the appropriate engineering studies, provide whatever documentation is necessary in order to make a compelling case both on your side and our side. There is I believe and correct me if I'm wrong, I think there is still a view that we were not given factual information and that I should say not that we were not given factual information, but that there was implied information given that made representations that we felt are not in fact what has occurred on site that are not what we expected. The third option is that we actually move aggressively forward into a revocation hearing. I personally am not in favor of that option because we are not a full board and we have not heard all the facts and I want to give the applicant full opportunity to basically make their case again before we believe that we have to move as aggressively as a revocation hearing. How does the board feel about that in terms of scheduling another special meeting?
Prescott: I'm in favor of option two.
Dolton: I'm going to read a motion that was recommended by our attorney and once again, if there's any aspect of this motion you disagree with, that's a matter for our attorney. I'm going to read the motion and then I'm going to ask one of you to make the motion that I have just read and we will vote.
Dolton: we are talking about the special meeting option. The motion would read
I move the Zoning Board of Appeals direct staff to conduct a review into the feasibility of driveway access from Bluff Road to the McFall property parcel 28-11-134-00003-03,
including obtaining formal documentation from the Grand Travers County Road Commission regarding access approval or denial and engineering analysis of alternative driveway configurations. The property owner shall deposit an escrow of $7,000. (That will be $3500 for
engineering review and $3500 for legal fees) within 10 business days to cover
Township costs. The cease-and-desist order shall remain in full effect unless the underlying zoning administrator's determination is appealed and no construction work shall be permitted on site until such escrow is paid in full and the Board reconvenes at a special meeting to be scheduled within 30 days of escrow receipt to determine whether further action regarding Variance Number 927 is warranted.
Visger made the motion with a second by Prescott.
Roll call vote; aye-Prescott, Visage, Dolton **Motion passed by Consensus**
Dolton: we will schedule another special meeting because I think that's the fairest thing we can do and give the applicant and the township adequate time to fully understand what is in fact feasible because the feasibility is frankly the question here. We will move to public comments. Anyone wishing to speak?
McKellar: I appreciate being able to come back and to reiterate a couple of things. There seems to be a dispute about what access we are going to use. In light of that, legally and properly permitted excavation occurred on the property related to the foundations of the home. We now have significant excavation activities that occurred that were engineered and anticipated to have footings, retaining

walls, foundations placed in the area of concern. After temporary cuttings of support the earth around it. We have had public concern justifiably by Jane (Boursaw) and others about the support of that road, Which we can ensure will be maintained by those activities related to the foundation and the retaining wall. We are now at a point where a 30-day delay jeopardizes the integrity of the existing permitted activities related to excavation of the foundation. The continued delays made with the seasonal delays more concerning. I would implore the township to see fit some type of plan short of 30 days to ensure the ability to take action consistent with the plans to support those areas by placement of their foundations and retaining wall. It is but for the township cease-and-desist where we have a situation we cannot achieve. That is concerning and the further delay there is, we cannot ensure that supported by the current excavation level. This is the way this has turned out. But none the less, we need to work longer to find some solution to ensure that while there's other activities for trusting but verifying representations forward in a safe way. Thank you for your time. We'll be responsive and I look forward to conversations regarding the short-term issues. Thank you.

Dolton: I am sympathetic to the comments you have just raised. I am hopeful Chris (Patterson) that within the motion that the statement "cease-and-desist order shall remain in full effect unless the underlying zoning administrator's determination is appealed." Does that allow enough wiggle room for Mr. McKellar to address the concerns he has raised?

Patterson: Yes. I think twofold. One, he could appeal it, although I think Mr. McKellar's got a fair response to say that an appeal process is a 15-day public hearing. So that's probably some concern related to timeliness. But the cease-and-desist is based on the zoning administrator's determination. It was twofold. Partially based on that work continued after we had gotten acknowledgement from Mr. McKellar as well as concerns about compliance. I don't think that you have found the zoning administrator to be unable to make those changes. I don't know what they are proposing. Typically, we don't look at this stuff in the abstract. I think they would provide some engineering analysis and propose some sort of sedimentation control or whatever sort of soil stabilization or bank stabilization. I don't know that it needs to be what's currently proposed for the retainment or foundation system. We could see if that's allowed under the current zoning ordinance. We'll certainly leave those powers to the zoning administrator. Your motion was not intended to box that in.

Dolton: it is not the intent of this board at this meeting to be punitive. It is the intent of this board at this meeting to look for additional information. There is somewhat of a pattern that appears, I am going to be very cautious here, that it appears to imply some misrepresentations. We are not positive of that, but you just heard another one from Patterson where there was a suggestion that the request to stop all work and it was represented that the work would stop and in fact, it did not. You have to understand the concern the board has about fully being on board with representations of the applicant. We are not denying they may in fact be correct. We are not in that position to say, but we are in a position to say we need more information so we can move appropriately forward.

8. Citizen Comments

Dolton: are there any more public comments. Anybody wishing to speak?

Jennifer Venegoni 16213 Center Road: my husband and I came up here from Oakland County and we have learned a very strong lesson here on the peninsula and that is this is a very small place. Even though it's not a small place, it is a very small place. And quite frankly, being neighborly is the most important thing that you can do up here on this peninsula. We started out and bought a piece on Bluff Road and decided that we wanted to be agricultural. So, we bought on Center Road and ironically, we sold our house on Bluff Road. We've not regretted that. But I can tell you, we now live adjacent to farmland is owned by the Johnson's and you know that the Johnson name is Jane's (Boursaw) family.

And we've learned some hard lessons about being neighborly to the farmers because you just have got to zip your lip and just be neighborly. And I've got to tell you, I think the whole sad situation here is that no matter what happens, these folks are not going to be good neighbors if they don't straighten up and start paying attention to the neighbors they are now building next to. Because that is all you have is neighbors up here. That's all I have to say.

Katie Grier 12393 Bluff Road: as I listen to what this project involves, I don't blame people for wanting to live on Old Mission Peninsula. It's a beautiful place. But as I listen to how this piece of property is being manipulated and I mean the number of trucks that have driven by our house day after day after day. And you know it just comes down to one of the neighbors had mentioned during a walk that we had when they first moved here, they saw otter sliding
down the waterway going into the bluff on that piece of property. And I think about that and you know maybe at some point we have to say that not every piece of property is to be built on. You
know we have to be respectful of nature and we just have to come to realize that and maybe that's why that property sat for a while without being sold. We know people looked at it and they didn't buy it because they probably came to the realization of what it was going to take to build on it. And so at some point maybe we just have to say not everything's meant to be built on.

Chris Ostrowski 1010 Peninsula Drive: I think I built over 50 houses on the peninsula in the last 10 years. And this is a unique piece of property. And if you leave this unassisted with the angles of how steep these bluffs are with this rain, with this time of year, you're talking about a catastrophic failure of the bluff off the creek. If you don't shore this all up and stay on track, maybe not the construction for pouring in the foundation but at least make sure you can protect what's already exposed is a big deal. That's number one. Keep that into consideration when you're saying cease and desist because that's timely is how these setbacks, how you put the silt fence in, how you protect the wetlands, how you protect the creek, how you protect the otter is by staying on construction. That's one of the thing Dean Adam of BAC does very well. And the last thing is neighborly is also being polite on social media. Being polite and saying the nice things about your neighbors. Having the ability to have a disagreement with somebody but still being civil and being neighborly is a big deal. Thank you.

Dolton: I genuinely hope that the township will take comments like yours and Mr. McKellar's into account as we move forward because I agree the goal of the wetland ordinance is to protect the environmental integrity of the property and that's what's at stake here and none of us want to see further damage. I think what we're troubled by is what we saw certainly looks like environmental damage and the idea of restoring environmental damage only to conduct additional environmental damage by putting a culvert across the creek is concerning and that's why we're here.

Jim Linsell 13581 Bluff Road: I came with some questions and the questions had to do with when first township officials but especially our county drain commissioner and soil erosion people and the permanence office visit the site and I did not get my answers.

Dolton: it's because the board, unfortunately, cannot provide that answer. We wish Kopriva was here. She would be able to.

Linsell: the reason I asked is that I believe the process has been used and allowed this to occur needs re-examination and change. I'm concerned for all of the topography of the peninsula and future construction that can occur if this process is maintained in the style that it is.
I'm also not interested necessarily in individuals being held legally responsible.
On the other hand, if there was malfeasance in the process used or lack of competence on the part of officials who allowed this to proceed, then I do believe there should be some form of consequence

whether that is personal evaluation or publicity not sure what that is, but it sure seems like it's appropriate at this point based on driving by once or twice a day and watching what has occurred. It's a travesty. Thank you.

Jane Boursaw 12875 Bluff Road: I had a question about the cease and desist. I wondered if that includes Consumer's Energy work because I talked to two guys who were in my driveway today. I own the property directly north of their property and they were talking about putting a transformer in tomorrow and digging up part of my driveway to do it. The driveway that I share with Julia and Mark. I don't recall ever giving them permission to use my driveway and they've run their line up the drive and built access to their utility box. I know I'm not supposed to ask questions during public comment, but I just wondered if maybe Chris (Patterson) could address whether the cease and desist includes utilities like Consumers.

Patterson: I need to check be honest because our land use permit only relates to the proposed single-family dwelling and the structure that's provided. It probably doesn't prevent utilities themselves so long as they don't violate other provisions such as development within the wetlands. We certainly will send that information to Kopriva to make sure that she's aware of it and if there needs to be any further follow-up. Mr. McKellar has been very responsive and easy to get a hold of and so we can make that contact, but I don't have an answer this evening.

9. Board Comments

Dolton: I do want to acknowledge I've heard on more than one occasion from Patterson, in particular, that Mr. McKellar has been very responsive and I wish to acknowledge that. I think at this point the board and based on the motion understand that we simply need more information at this point. Again, we don't wish to be punitive. We want to protect that lot. If additional work needs to be done to stabilize what has been done, I encourage the township to work cooperatively with the applicant to make that happen. And with that, I will accept a motion for adjournment.

10. Adjournment: Prescott moved to adjourn the meeting with a second by Visger.

Approved by Consensus

Adjourned at 8:37 p.m.

November 9, 2025

Mr. John Dolton
Chair
Zoning Appeals Board
Peninsula Township

Dear John:

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I am concerned that our Township Planning and Zoning Administrator, and our Township attorney will not be at the meeting. Coupled with my absence and Larry Dloski's resignation, more than half of the team that reviewed ZBA 927 will be absent.

I visited the site Friday, November 7, and frankly, was appalled. I can assure you this is NOT what I felt we were approving. In its current state, the project clearly is in violation of our Wetlands Ordinance, as well as the easement approved by the Property Division Committee.

We were expressly told by the McFalls attorney and builder that a driveway could not feasibly be built unless it used the existing easement. Their argument was supported in a September 11 letter by Gosling Czubak Engineering, Inc., in which it was argued that the first choice for building a driveway would NOT require steep grading to reach the homesite.

My visit today makes it clear that steep grading was always envisioned, and that more importantly a driveway *could* be built in the area the ZBA Committee was told it could not.

The Committee certainly did not envision clear-cutting existing timber on the eastern slope of the property. The same September 11 letter from Gozling Czubak implied that the approved driveway would minimize the removal of mature trees; instead, just the opposite has occurred.

As you know, this project was troubled from the start. It is unclear if the Land Division Committee ever visited the site. EGLE never visited the site. The landowner didn't relay information about the wetland and driveway issues to the McFalls at the time of purchase. .

I'm not sure any members of the ZBA Committee were entirely comfortable granting the original variance, but given representations made by the applicant and the Township's current zoning ordinances, we had little choice.

At the very least, I would like to hear an explanation from the McFall's representatives of how we now find ourselves in the unfortunate position of having to issue a cease-and-desist order for further construction. I understand that the proceedings will be taped and I look forward to reviewing the discussion. Should the meeting be rescheduled, I am available on the 11 and 12th of this week.

Sincerely,

Wes Cowan
2849 Shorewood