Peninsula Township
Zoning Board of Appeals
December 16, 2025 7:00 p.m.
Lola Jackson Transcribing Secretary
DRAFT

PENINSULA TOWNSHIP

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PENINSULA TOWNSHIP

ZONING BOARD OF APPEALS MINUTES

Regular Meeting
December 16, 2025
7:00 p.m.

1. **Call to Order** by Dolton at 7:00 p.m.
2. **Pledge**
3. **Roll Call Visger, Prescott, Dolton, Jerman, Kopriva-Zoning Administrator, Patterson-Peninsula Township Attorney on Zoom, Jessica Shepard-Esquire Depositions Solutions**
4. **Approval of Agenda Cowan moved to approve the agenda as presented with a second by Prescott. Approved by Consensus**
5. **Approval of Minutes from the October 8, 2025 & November 10, 2025 Meeting**
   Visger moved to approve the minutes with a second by Cowan. Approved by Consensus
6. **Conflict of Interest** None
7. **Brief Citizen Comments – (for items not on the Agenda)**
   Dolton stated comments with regards to the McFall property Business Item 1, which is a continuation of the discussion on Variance Number 927 were invited to comment.
8. **Business:**
   A. **Continuation- 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 McKellarFall, 5484 Pinnacle Ct, Ann Arbor, MI 48108
   Property Address: 12839 Bluff Rd, Traverse City, MI 49686
   Parcel Code #28-11-134-003-03

   1. Updates by Township Staff
   2. Applicant Presentation
   3. Discussion/Deliberation/Decision by Zoning Board of Appeals

Christopher Global- Global Environmental Planning Associates, 8288 East Northwind Trail, Lake Leona
I was retained by concerned neighbors of the property to take an independent look. I prepared a short letter and report and sent it over this weekend. A couple of procedural questions, and maybe these

could be answered by Kopriva or Mr. Patterson tonight. The first one is if the township is on firm ground in terms of use variance authority. As you probably know, use variance is not a guarantee to townships. You must qualify to be able to do a use variance. One criterion is that it's in your ordinance. The term we can do a use variance in someplace or you've done it in the past and can document that was done before February 15, 2006. Some clarification tonight would be helpful to protect the township and make sure that we're on solid ground on that topic. You've been asked for two kinds of variances, a use variance and a dimensional variance. The dimensional is easy. We want to use something within the 25-foot wetland setback, right? The use variance is more important in the sense that it's asking to fill and use a wetland for a non-wetland upland purpose. We have all these overlapping jurisdictions. The township's got language in their ordinance. The state typically takes the lead in permitting. But because these wetlands are within 1,000 feet of the Great Lakes, the US Army Corps of Engineers also must sign off. I'm the planner of record for 14 townships, all in this area and I do wetland work every day. This is important. The joint permit from the feds has not been addressed as far as I know, but it's another understanding of the kind of the procedures here. Secondly, it's proposed that the overflow from stormwater would go into wetlands and then into the drain along Bluff Road. That's a wetland use. I've always had to have a permit address before that could ever be done on projects I've worked on and it was not addressed here. There is excavation and cutting into the bank right next to the edge of wetlands. That's effectively hydrologically going to guarantee you have drainage of wetlands. You reduce the
Elevation and you're going to see drainage into that cut area. That's specifically prohibited by state law. the intent of your ordinance is to protect wetlands. We would see the draining and the destruction of wetlands from that. It needs to be addressed for a lot of reasons coming to you to ask for use and dimensional variances are premature and certainly administratively incomplete until this kind of stuff is wrapped up. I'm new to this story. I don't have a dog in the fight, but I'd like how did we get this far without basics like this answered? It's not clear to me. Regarding the temporary
driveway, do we know if it's had impacts on wetlands within the 25-foot setback? We do. You do. Most importantly, you've got six criteria. You have to say in the affirmative yes to all six to grant either the dimensional or the use variance. And that's the heart of the matter. All parties stipulate that there are unique circumstances here. Slopes, wetlands, a stream, and the like, but this is far from careful or innovative development to come in and clearcut a slope to propose wetland fill at all while there are all kinds of other options. That's not the best kind of development. There are feasible, meaning technically available and prudent alternatives to develop this site and fulfill the homeowner's desires and intentions without harming any of these resources. None of them. Slopes, wetlands, streams, any of
it and there are flat areas to the south of the drive, the permanent drive, and there is an area of septic that's flat.

Dolton: I'm sorry to interrupt you, but for the moment that is on the parent parcel. That is not part of their parcel. I hope that is in the drain field and I want to remind you to keep your comments to roughly three minutes and we are already there.

Global: Self-created. This is poor planning and entirely self-created. We don't meet that criteria. in terms of strict compliance, better planning could lead to a place where these folks could build their home without coming to you at all for a variance request. Next in D, it's really the balancing of the equities is kind of the point. These are public trust resources. You don't get to first choose to impact waters and wetlands. That's the last choice when there are no other alternatives. So seriously, please consider that. In terms of E, there will be environmental impact. There already has been environmental

impact and that has a negative impact on the neighbors. They don't qualify for E either. Lastly, F. they qualify on that one. This is a use that's allowed in their zoning district. So lastly, very quickly, there are alternatives to build on uplands on this site. Even though it's challenging, it's possible. We do it all the time. There should be a free span bridge over that creek. Not anything like a culvert. I can't believe that was approved by Josh Crane. We're told no on that kind of thing in Leono County every day. We have to do a free span bridge over stuff like that. Innovative design would get there. Storm water should be infiltrated, not run off into surface water. The landowner's goals could be achieved without having to come to you for a variance. And they don't qualify for five out of the six criteria under your ordinance. Thank you.
Dolton: just so we're all clear here, the initial variance has been granted. We're here to review whether granting of said variance was appropriate or not.
Global: the variance is use or dimensional?
Dolton: let me clarify, a use variance in terms of this board would be a change from say residential to commercial use. For example, changing agricultural to commercial use or agricultural to residential use. There is no change in use here. Let me finish…
Global: you can't build in a wetland of any kind. Any development has a use.
Dolton: per council's advice and council practice that is not considered a use variance. FYI.
Cowan: I'd like to address the Army Corps of Engineers being involved in this. I believe, I may be wrong, but I believe the Army Corps of Engineers, in this case, if Eagle grants a permit because of the size of the wetlands the corp is not involved.
Global: not the case. 1,000 ft is the criteria and we go through small reviews with the corp on a regular basis so you can check with the Detroit district.
Dolton: while you raise extremely valuable and valid points, the role of the ZBA is to look at a specific question that was brought in front of it, which was the request for a variance to build a driveway across the wetlands. The other elements that are necessary to complete the construction are outside of our purview. The order in which they need to occur is not something we get involved with. It's something that is left in the township's hands to ensure all the "t" and "I" get dotted before any actual building permit is given.
Dolton: I want to give a little introductory background here. On October 8th, the ZBA granted a variance request to cross the stream and wetlands to construct a permanent driveway utilizing an existing easement from a neighboring parcel. This variance was granted based upon representations by the applicant and supporting documentation indicating that any alternative access to the site would pose an extreme practical difficulty due to the steepness of the topography and would be more environmentally harmful to the wetlands. Subsequently, and at that time the variance was granted based on those representations. Subsequently, a construction road was placed in the general location that was previously indicated would pose the practical difficulty and had caused the very environmental impact that was to be avoided by the use of the variance. This action by the applicant raised serious concern and questions by the township and residents resulting in a construction cease and desist order. It also prompted a request for the ZBA to review the variance approval in light of the actions taken on site. We held one such special meeting on November 10th and this is in essence a continuation of that discussion. At the subsequent special meeting held by the ZBA on November 10th, the applicant remained steadfast in support of the appropriateness of the variance request indicated that the impact of the construction road would be mitigated and that the plans for the construction road had been communicated to the township. I should note that no discussion of or plans for the construction road were communicated to the ZBA and the ZBA at the October meeting did not address the issue of

construction access. At the conclusion of the November meeting, the ZBA requested the township engage an engineering firm to independently review the site and make a determination as to the feasibility and the environmental impact of alternative driveway locations. We now have that report and we are here tonight to gather additional information and to decide on any appropriate next steps. With that as background, before we move to board questions and discussions, I want to give the applicant certainly every opportunity to to be heard.

Marc McKellar Attorney with Kuhn and Rogers 433 Eastern Sky Drive representing the McFalls.

McKellar: good evening. Good to see you all again. I have had the opportunity to review the letter from Mr. Global. Just generally I don't know that it's not necessarily to agree with most of the statements made. I don't know it's germane to the review tonight. I just want to get that on the record. In layman's terms, what I understand the review to be here is an opportunity for the ZBA to have engaged with their engineer to determine whether or not the representations made by myself or the engineers or applicant were or did not remain truthful or accurate at the last meeting. I believe that process has been undertaken. We've had an opportunity to review the Gourdie-Fraser (GFA) report and it confirms that the representations remain accurate that were made. I certainly understand and this is probably lost in communication, how we may have provided information. I don't discount the fact they might have not got to the ZBA and it's regretful on several levels and I understand that it kind of shocks the conscience seeing the application manifest on the site, but ultimately the engineers' information we represented were accurate and that's confirmed by GFA. Tonight again, if you guys have questions, we have all the engineers available and myself to answer questions. The GFA report is kind of self-evident, and mostly dispositive for the action needed this, before the board. But again, if you have any questions of me or the engineers, we're happy to address those issues that are germane to the review and, the scope of that. Thank you.

Dolton: I imagine we will have questions. Anyone else wish to address the board with respect to this project before we move to board discussion? Seeing none, let's open it up to board discussion here for questions of the applicant or their engineer or any other relevant topic here.

Kopriva: the township engineer is also available here and GFA from the letter that you have. If the ZBA has any questions specific to the township review on that, Patterson is available. Thank you.

Prescott: who would be able to answer the question about needing the Army Corps of Engineers approval or permitting? What is the township stance or maybe our township engineer. Is it really for someone who's not a lawyer. I understand the thing about 1,000 ft, but then there's things about if it's under one acre or two acres or if it's over five or if it's contiguous to the body of water, which it is? I'm just trying to determine if this is a project that requires Army Corps of Engineers permitting.

Kopriva: I would say that it's not because typically that has to do with the high-water mark and where the work is being done related to that versus wetlands. can you assist on that as the engineer? Do you have any knowledge?

Mark: I really can't. That's something that you have to discuss with the permit agent. And the EGLE permits in Michigan is a joint permit. They do get sent to the Army Corps. The Army Corps has a much longer review period. I'm not sure the triggers where one should be following up with Army Corps agents. Typically, residential projects, if they're water facing, maybe they do get involved, but it's nothing that my experience can really dictate yes or no with this current project.

Dolton: that is something for the township to take up. I do have a starting question here, which is the motion from November's meeting requested that the applicant obtain formal documentation from the Grand Traverse County Road Commission regarding either approval or denial for a driveway location on the subject parcel. Was that accomplished? Provided to who? The board has not seen it.

Kopriva: I haven't seen it.
McKellar: I'm pretty sure we provided that.
Dolton: we're not talking about sightlines.
McKellar: no, no, it's, let's put it this way. It's been permitted provided after release and nothing else, but it's been provided in the complaint in the litigation council.
Dolton: to Patterson, did we receive that documentation of approval or denial from the county road commission?
Patterson: my computer just locked up. My video might be on, but I have no sort of use of my computer. We did provide the response motion that we filed. We sent that to you, share, and for purposes of when that was found in the court process and I can pull the attachments up and share them as soon as my computer becomes unlocked. I don't disagree with Mr. McKellar that the information is there. The only other thing when my computer was locked and the applicant might be able to speak to this, but I believe the Army Corps review may be part of the EGLE permit review and submitted. To answer that question that was raised, they might be able to speak to that on the face of the permit itself, but I can't pull the permit up right now because my computer's locked up.
Cowan: regarding the core of engineers' involvement in this project, I'm reading off of EGLE's website now. They're talking about federal regulations. In 1984, Michigan received authorization from the federal government to administer section 404 of the federal clean water act in most areas of the state. A state administers 404 program must be consistent with requirements of the federal clean water act and associated regulations set forth in section 404 B1 guidelines. In other states, an applicant must apply to the US Corps of Engineers and a state agency for wetlands, lakes, and stream permits. Whereas applicants in Michigan generally submit only one wetland permit application to EGLE and receives federal and state authorization with a wetland permit. That's what I thought I'd read that there is no Army Corp of Engineers involved. Once EGLE issues a permit, the Corp is out of it. I'm just reading off their website.
McKellar: they have a separate letter and I've been through this dozens and dozens and dozens of times.
Dolton: luckily for us, this is not a matter that has to be taken up. For further discussion at another time. Questions for the applicant? Questions for Kopriva?
Cowan: I was a little bit puzzled when I and I appreciate the new maps that we got showing the different alternative driveways. It appears to me though that option C, the north driveway, the average slope is 6.9%, which is about 1% more than the A driveway. Is there someone here that could talk about that? And it also said that section C would require retaining walls and massive digging out of the hillside. The retaining walls are going to be built anyway, aren't they? And isn't there already massive removal of the hillside that's taken place?
Dolton: could we have the engineer perhaps to come up and address that?
Andy Pervvis- Gosling Czubak, 1280 Business Park Drive, Traverse City, Michigan 49686
Pervis: GFA put together the concept sketch over the top of the storm water control plan we had provided that shows options A, which is the currently , permitted access, option B, which is , immediately north of the stream and the wetland, and then C, which is further to the north near the north property line. Option C that you had brought up, it would have about 6.9% slope; again these are approximate values, which is better than the 10% slope and option B, which is about the same as option A. We're talking in approximates 3/10th of a percent. What option C does require is pretty much we would be within the 25-ft wetland setback across the entire frontage of Bluff Road and then as the driveway turns and heads back west it would also be in that which would require fill in the wetland

setback more so than what we have now. In order to get an entrance off of Bluff Road to provides a safe turning movement for vehicles, delivery vehicles, or emergency access, that radius would go into the hillside further than what the retaining walls for the house are already required. So that would require additional retaining walls if not cut slopes into the hillside that would go beyond what's already been proposed.
Cowan: are you talking along the north south on Bluff Road?
Purvis: yes. It would be the northeast corner of the property. Basically, where there's the red circle (on the map). Yes. That says C. Basically, due west and north of that in our review there would be grading beyond what is or disturbance tree removal, disturbance to the slopes. Revegetation would need to occur above and beyond what is proposed for the retaining walls for the house if that slope is already clearcut.
Cowan: the slope is already clearcut, isn't it?
Purvis: it would be a clear top beyond what it is now. We don't have a clear line that says this is what's been cut to as far as our survey or site plan is concerned. I can't give you a clear line of how much more.
Cowan: when you say that the road if you chose option C for virtually the entire length of it, it would be within the 25-foot setback from the wetlands, not in the wetlands per se.
Purvis: correct.
Cowan: it would impact the 25-foot setback.
Purvis: yes. We looked at that again and can't say percentages numbers but clearly the crossing that we proposed as far as the impacts to the wet or wetland setback requirements that is least impactful to the wetland setback requirements of the zoning ordinance. Did that answer your question.
Cowan: yes. Thank you.
Dolton: Kopriva, perhaps you can clarify something here, unless other members have questions. The construction road both crosses the wetlands that run in parallel to Bluff and extend into the wetland setback, which at least on the face of it the ordinance would not allow to occur without a variance in the first place. Let me back up one point here, is did the township receive plans for the construction for your review?
Kopriva: no, I don't have any plans for the construction driveway.
Dolton: I want to give the applicant an opportunity to respond. I believe he made a representation at the November meeting that plans have been submitted to the township. This is a rather significant point.
McKellar: the ordinance doesn't require it. It's that simple. We provided the curb cut location and it's a temporary drive. We needed temporary permitting. EGLE waved the obligation for a permit. The road commission concurred the application is permitted. There's no requirement that we provide that information to the township through any use whatsoever, but not at the ZBA level. We submitted the application documents pursuant to the requirements of the ZBA standards,
not those that are required for the land use permit or site plan review just simply because they exist for a purpose. They exist so that everyone stays on mission, there's no mission creep but there isn't an obligation to do it. We gave the information that was necessary. I was not trying to hide the ball or anything; it's just not within the purview of the township to permit
Cowan: so that was an error on your part saying plans had been submitted?
McKellar: the plans show the curb cut; we don't have to prove not needing a permit from EGLE.
Dolton: how do you submit that?
McKellar: the representation was we submitted the plans that are you know i.e. those that are required under the ordinance and nothing more. You know there weren't engineered plans or anything like that

because it gets restored. It goes back there's a lot of slopes that get reestablished there. I would also mention that on the slope section related to that section or option C, you know, there's a significant amount of removal that would have to go there. The retaining walls would cut back like you said. There is in addition to the wetland setback impacts, there would be additional retention walls, removal of soils but also there'd be no land to then reestablish the vegetation that we would be reestablishing under the current plan. It has been clear-cut a and we acknowledged that a lot of those cuts were made beyond what we expected by the tree company. Their indication was the root structure with those trees was so close to the cuts where the retaining walls were going to go would be unsafe. We would have to reestablish those trees later. There was further cutting than we anticipated as a matter of safety. Even if you want to see we have less place significantly to reestablish the vegetation and we would have existing slopes that are not touched right now, that would have to be touched. Not only would it be more impactful in the wetland setback area, but it would also be more impactful in terms of soils and vegetation. I hope that answers your question.
Dolton: You did. Thank you very much.
Kopriva: since Patterson is having some trouble with his computer, do you know which exhibit that driveway was from the road commission.
McKellar: is it in C? It might be in C. I know it's the road commission approval we were talking about. The road commission approval or denial for exhibit C.
Kopriva: I pulled it up and exhibit C only has the soil erosion permit in there and so I was trying to find it.
McKellar: I'll take a look quick, yes, it is exhibit C.
Kopriva: If you could let us know what that is.
Patterson: I have audio now. Are you talking about the complaint or your motion? Because your motion might be spoil (?).
McKellar: Yes, the civic complaint, is the one I'm referring to.
Kopriva: maybe I don't have that one then.
Dolton: you control distribution of that. All right. Let's move on. Thank you, sir. Back to my question. Given the construction road, the way it is constructed, would it not need a variance to build that construction road?
Kopriva: this is the same section that we talked about when we were talking about the driveway where it is right now. In section 7.4.7 for flood plain and wetland controls and it's A2 where it talks about there should be no development or modification of any kind within a wetland or wetland setback**.** The temporary road is a modification or development within the wetland setback.
Dolton: what's troublesome for myself at least is that the applicant knew enough to request a variance to go across the wetlands for the permanent driveway location that he requested but for some reason did not inform the township that they were going to be building in the wetlands and in the setback for the construction road which also requires a variance.
Kopriva: right. I had no discussions about this driveway, this construction driveway.
Dolton: for me, the representations made that such a location was once again practically difficult and more harmful to the environment, yet it occurred anyway is what I find troublesome. Any other responses from the board?
Visger: I totally agree.
Prescott: it's bothered me for a while.

Visger: if I had known about the temporary road during the meeting back in October, I would have had a ton of more questions relative to what you're bringing up. And why not just use that as a permanent road then too?
Dolton: the engineering support report I got, at least one of the issues is in the report. While I can't dispute the findings addresses the existing kind of footprint of the home and the existing layout of the desired access to the parcel. That's generally not a consideration when we look at variance requests. We look at whether there are practical alternatives to the variance that's being requested. I'm just concerned that we don't have that kind of information and we didn't specifically request that, but it is limited by the fact that the location of the garage requires certainly a longer driveway should you access off the subject parcel that we're addressing than if the garage was located in a different spot on the lot. I have that concern as well. These are just my concerns. This is a board decision. Certainly not my decision. Thoughts?
Prescott: what we asked for at the last meeting was for a township engineering report on the driveway and the feasibility of using option B. And that's been provided, but then we have this now and it seems to me we have separate thing of the actual construction not needing a variance. I don't know how that's handled by the township or what's in our purview to do tonight. I'm unclear on how that works.
Cowan: I guess you mean a construction road.
Prescott: yes. The construction road should have had also needing a variance, which we weren't aware of because we didn't have the information. But that's not really why we called this meeting for tonight. Although it's all part of it. I guess I'm asking how this works. So Kopriva, we have a bit of a dilemma here among others or a complex dilemma in that any continuation of work utilizing the construction road at this point is not permitted because there's no variance in place for said work.
Kopriva: the construction driveway as it exists or if it violates or it didn't receive a variance that would be all enforcement and kind of staff purview that wouldn't be in the ZBA purview. And the reason is we have applications that are accepted that the application or the applicant is asking for a variance. We're not telling them or the ZBA certainly is not telling them what variances they need to have. You're acting on the applications that you receive from staff when we're having conversations or reviewing applications, that's where we're going. You need a variance for this or this doesn't meet the ordinance and walking through that. I guess this is kind of a lesson in that it wasn't on any plan, so there was no conversation. It couldn't be said this is in the setback. There's an issue and you need to get a variance for it as well. But as far as where it currently exists, if it meets the ordinance or does not meet the ordinance. That is something that's handled administratively, and the ZBA should not be considering or making a decision on that at this time.
Dolton: so perhaps just a question for the applicant, since you knew to request a variance for the desired permanent driveway across the stream and the wetlands, why did you not request the variance for the construction road?
McKellar: I've personally witnessed dozens and dozens of temporary construction drives of alleged wetlands in this township that I know have never been permitted or needed a variance. Second, I'd like to get the history of one that's ever submitted for an application for a variance in this township, and I bet there's zero. The definition of use is typically, in the concept of the law, for permanency and/or temporary is you know and Kopriva may disagree, but a modification for a use and a modification for a structure in a temporary sense is typically not required. You don't need a permit to put on a porch, you know, things like that. The issue is we've never believed you need one. I don't think the ordinance requires one. I know there's an interpretation maybe it does, but the language does not make it clear whatsoever. If there was an obligation to get one and it was known, we would have submitted it. We're

not going to hold up a project like this over the temporary drive variance, which is secondary to the most important thing, which is the permanent access. I understand where you're coming from. I respect that. It's just there was no clear path that would be required and frankly the way that the township is operated is never to require one. We didn't feel it was required and I would still think it's probably not under the current ordinance, but that's not beyond my comprehension that could be interpreted that way. Petterson brings up a point that's probably important is the scope of the review in my opinion tonight is whether the representations made related to the issue that was brought to the engineer is appropriate if there needs to be a variance related to temporary drive. That's a separate issue we can address later. The big issue is if we can get resolution on the scope of review tonight. I know people don't like it. They don't like what happened or proceeded or the looks of it. I understand that, but if we can get resolution on that issue, then that gives us an opportunity then I can work with Patterson and Kopriva to find out what is or isn't the issue with the temporary drive. Practically speaking, that means our clients are allowed to continue with construction on the approved variance drive until when we get a temporary drive approved. And that seems like a path that no one likes but is a path that may be a way forward that's prudent given the circumstances. So that's why it was not to hide anything. For goodness sakes it's such a big project. There is so much involved that if that was what we thought was the case the engineers would have put an application things like that. I guess that's our response. And if we didn't, you know, and that was what the township thought needed to be done, I wasn't necessarily the one involved at all, falling on the sword and say, "Yes, we should have, you know led that charge." But I'm happy to have that conversation with Patterson and Kopriva about that administratively and make a determination if we do need to come before the board, I do think they are related, but administratively, procedurally they're kind of distinct, at least in my opinion. Thank you.
Dolton: I appreciate your candor. Back to board discussion.
Visage: driveway C is a potential option. They should consider the original proposal and the approval for A. When I was out there looking at the site, I assumed the rest of that bank was going to be retained and then kept natural and then when you go out there and see the temporary road in place, albeit now it needs a variance, it's shocking.
Dolton: this really takes me back to why we approved it originally. I know what my assumption was, but I'd be curious what other members assumptions were, which was based on the representations we heard in the approval we gave.
Visage: my assumption was that access for construction purposes would be through the variance that we had permitted. That's absolutely true for me. Is that true for you?
Prescott: absolutely.
Cowan: absolutely that's where all of this is coming from. We all went out to look and see what happened and we were shocked because we all thought that the construction road was going to be the access with the 30 foot, 38 foot long culvert across the stream and that the hillside wasn't going to be, I don't want to like to use the word strip mined, but basically that's what happened there. it was hilltop removal at its worst and that's what shocked the sensibilities of all of us and then the clear cutting of the trees. That said, you know, we had approved the permit based upon that road being the option A being the construction road. I guess the lesson that I took away from this is we better damn well read these plans five times before we approve anything. But we wouldn't have known because we didn't know about the construction road, which isn't required.
Dolton: had it been disclosed to Kopriva, then she might have made the determination it required a variance and it would have come to us. But as their attorney pointed out, there's nothing there that

requires it. Well, it's not clear. I agree as is often the case, unfortunately, with our ordinance. It can be vague in spots.
Prescott: I definitely think it requires a variance. It's activity happening within a wetland and it doesn't matter whether it's temporary or not. Damage to the wetlands is not temporary. You know, it doesn't matter that it's not going to be there permanently, but I know that is not what our focus is tonight.
Dolton: the board's challenge is to find kind of an equitable solution here.
We have a dilemma that is frankly unfortunate for the township and for the applicant.
Jerman: It's not a good situation. I am new here, but I would say it's important to stay on focus. So it seems like there's activities that occurred on site that the board had an understanding that A would be done and you went out to the site and there was more that was done outside of the scope which you thought that you were approving. As Kopriva pointed out there are some aspects where I don't want to say it's done it in the past, but in terms of a temporary access we need to focus on what we're here to focus on. Not necessarily that and that has to go back to the board and determine should that have been reviewed or what's the policy and procedure moving forward for anytime an applicant comes in. It's prudent for the board to make sure that they're reviewing those things to go back to that applicant if there is additional information that's needed. But it's important that we focus on ensuring which one of these options. I'm new but looking about option C seems the most prudent but it's ensuring that what decisions are made from here that's what we have to focus on. I understand it's a hard thing to correct. Why we've kind of digressed a bit is to make sure that we have kind of all the information on the table so that we can think about this as clearly as possible.
Dolton: I guess my dilemma is that we approved one kind of damage to wetlands through the variance that we approved and now we're facing two potential damages to wetlands because one, the construction road is there. It's present and the desire and the existing variance still exists to place a permanent driveway across the stream itself. And me personally, I'm not real thrilled with allowing two kind of environmental issues when we approved one. But I'm open to solutions. Any thoughts about how we resolve this in going with C?
Prescott: we still have the septic that is going to be going over to the other parcel right underneath the wetlands where the driveway A is. So why would we say C and put that there?
Dolton: it seems now we're this becomes a judgment call from the township whether or not boring under the under the wetlands in order to provide access for the septic is destructive enough or invasive enough that it requires a variance, which by the way we brought up from the very first meeting that and to Jerman's point and to the point that we try to make, which is our obligation to look at the variances that are placed in front of us, not to make a determination that other things need a variance and aren't happening. It's good information to know and it's valuable to have an opinion about this and I don't disagree with your interpretation. But again, we take guidance from the township and if the township is ok with them boring underneath the stream to get access for the septic. My personal view is I'm not here to challenge that. I might on a side separate discussions.
Prescott: I'm not necessarily challenging that, but if we're talking about driveway locations and you were saying why not consider C.
Visage: they haven't built that yet. They haven't crossed the wetlands yet, they haven't made that impact, they've certainly put the road in and made that impact.
Prescott: we asked for a report from the township engineer and the township engineer to me has very clearly, in his report, stated that the applicant's option A is the best and that's we asked for that confirmation we've now received it, as I do not like any of this.
Dolton: with the caveat that I said they did not consider alternative locations for the house on the

footprint or the design of the house, but that isn't specifically what we asked for, but we did get what we asked for. We really have kind of two choices here. One is that we feel that we're still not happy with this outcome and that we wish to move to a next step, probably being a revocation hearing, not necessarily saying that we're going to revoke, but a hearing to potentially revoke. Another alternative is that we're happy with what we've heard and put an end to it tonight. I'm going to propose; this occurred to me about an hour ago. I'm not sure it's a great solution, but it's one I would like to throw out, which is that the applicant does as much restoration work as is possible to do on the existing site as it is now. They cease to after that restoration is done, they cease to utilize that construction road. In fact, the construction road needs to be basically made to go away and that any further construction activity on the site has to occur in the variance that was granted for access to that site. That would be one alternative and some significant restoration needs to take place. I'm not sure if the board likes that.
Cowan: there are so many thousands of cubic yards or hundreds of cubic yards of fill has been removed from there to restore that hardly seems feasible. I mean, look at this project. There are two pieces of information we have tonight that we didn't before. One is that there is another feasible way get up to that garage to the building site. That's option B, excuse me option C. The other is that they are in violation of our wetland ordinance right now with the construction road. Those are the only two things that are different from anything else. I look at this as and I
I don't like this project. I haven't from the minute I looked at the plan because I just thought it was taking advantage of the lack of any sort of ordinances we have in the township to regulate development on slopes. But folks, if we don't have those, we've got to approve these sorts of plans. At this point, Humpday Dumpy fell off the wall here. And the only thing that I see we can do
is say, build, use driveway C.
Dolton: which would require a revocation of the existing request.
Cowan: I'm not advocating that.
Dolton: I'm just saying that for them to want to use option C, they would need to be denied the variance that they currently have. It would have to be revoked. Otherwise, they would have no incentive.
Our choices are to either implement a solution such as I suggested, and I'm not talking about a full restoration to back to where it was, but I'm saying no further damage, no further impact. Restoration as much as is practical given the situation on the site now, but no further use of that construction road going forward.
Cowan: back to the assumption that we made, which was that they're going to use the variance that they received to access the property for construction purposes. I understand the applicant's perspective of why they did not submit plans. One can debate whether the merits of that discussion, but I certainly understand the potential of taking that point of view.
Prescott: have we asked them I can't remember if we asked them why they didn't use A as their construction?
McKellar: that was kind of the question I was hoping I might be able to answer because it is important. It's a little bit lost and maybe we didn't communicate this well. We had sought additional, let's put this way, the home is being constructed the retaining walls the home the trusses that have to be done by crane and by certain equipment. The easement that we've been provided by the neighbor and the radius in which to turn is not wide enough to let most heavy equipment at all access the site. We sought additional width even in you know to accommodate those and we were kindly rejected and so we have a situation where we'd have to do a different type of culvert for the size and weight of the equipment to do the construction. We'd have more impact in the wetland. Then we'd have to remediate that impact and then put the box culvert in and we still would have problems with turning around at the top of that

to make the turn for articulated trucks and the cranes. The idea was to build in and build out on the construction temporary drive and restore that back as construction went along. There are a couple things I want to address that may be helpful for you. Most of the soils that have been taken off would be taken off regardless of the activities related to the temporary drive. There's not a whole lot of soils that need to be brought in and we're planning to do that anyway where the temporary drive crests on the very south side of the ridge. All that original ridge line is already in the plans. It shows the reestablishment of those grades. So, where the house is today, yes, that's all gone. that would be gone either way, regardless of which drive we used, that would be gone. We would restore that anyhow. The plan was to use a temporary drive for the entire construction. We've offered to Patterson and we'll put this on record here. Rather than two years of construction on the site on a temporary drive, we figured that as long as we could get to whether sheeting on the outside, then at that point, we would start restoration work, you know, several months, if not more than a year ahead of schedule. And that would allow us not to have the impacts, the additional impacts that are temporary and the culverting and crossing related to A and then we wouldn't have the issues. I would just say the neighbor may be sitting there with the measuring tape checking the tracks of the trucks and we didn't want to run into that and so it made more sense to build out and then re-establish that. We've offered to take away the idea of the temporary drive in its full entirety probably by half the time, restore it to the slopes, and then add additional trees and additional vegetation. That's not in the plan, wouldn't normally be part of restoration. And I would say another thing about the variance for the temporary drive that we may or may not be of issue, at least from the EGLE's perspective, it's not considered a wetland. It's only the township's ordinance that considers it a wetland. A ditch is not considered a wetland according to EGLE. They've waved permit requirement. The question is whether or not this goes back to the question of whether or not the township can have a different definition of wetland than EGLE and we don't think you can under the statute. It probably doesn't need a variance anyhow, but you know again in terms of what the chair has said. That may be something that is practical to do it completely. And I don't know if it's even possible to get that type of construction done that's been approved with that. But if we can mitigate it significantly, offer additional restoration efforts and mitigation efforts, surety bonds or financial guarantees to the township to ensure that those happen with access to the property if there's a failure to complete those within the time period, by all means. We're all ears, and that may be something where we sit down with the council, of engineers, Kopriva, Patterson, myself, and the builder and come up with a plan that maybe administratively they are comfortable digesting. And procedurally, I want to just go to another thing. The ship has sailed on deciding whether or not we get to use A, B, or C and offering B or C as an alternative. I don't know procedurally there's really an opportunity to do that at the ZBA level. That you know again that was stuff that I guess could have brought up at a different time, the size of the home, things like that. Just procedurally I think we're at the point where we have to kind of decide it's either thumbs up on A and we can offer conditions or accept conditions that are offered to mitigate the impacts. And that would be my honest goal to do that. And some other things we've been talking about is additional screening to the neighbors and restructuring of the slopes behind the garage by their driveway, one for noise from the site, but also for stabilization of that. We've submitted that to Patterson that we would commit to doing a significant amount of landscape restoration over there. Not restoration but landscape improvements there to mitigate the visual noise impacts and restabilize the soils between the driveway and the garage of the neighboring property. There are things we're willing to do certainly to mitigate that, but that's why the temporary drive was not used or was used was because we'd have to have initial impacts on the crossing because that box culvert wouldn't be appropriate. We'd have to go wider with the widths of the trucks with the fill and

must skim it back up. And then, we have the issues of being able to make the turn. We'd actually, believe it or not, there's a couple beech trees there. They're large and we can do that and even then, we probably can't make a detail how to throw out that as a no, I get it. But we're open to a reasonable solution.
Jerman: I just have a point of clarification. Did you make the comment that EGLE did not classify it as wetlands?
McKellar: they do not classify the ditch along Bluff Road as wetlands. The issue there is we may not need a variance there related to the portions along Buff Road temporary drive.
Patterson: can I offer some comments while Mr. McKellar is there? I have a couple things to offer for purposes of the scope of the meeting because I understand the listening to the ZBA grapple between temporary road a potential 25-foot-wide setback violation. That I've spoken with the to the zoning administrator about this and we do agree that we think it's something that has to be resolved or discussed. You might all be aware of, but I guess just to be clear, there is a lawsuit pending against the township related to this and so some of the conversations with Mr. McKellar all relate to those proceedings that are before the Grand Travers County Circuit Court. The reason that I raised that is that they have provided some means to discuss some of these enforcement pieces. If there had been various requests brought before the ZBA as it relates to that temporary construction draft we would hold a public hearing and it would be before you. This is kind of like the horse is already out of the barn as it relates to that temporary construction draft. It's something that we need to approach from an enforcement perspective first and then it's a question of a compliance pathway as to wouldn't this body see that back or is that something that we can potentially discuss and resolve in the current pending litigation that's in Grand Traverse County Circuit Court. that's where some of those conversations have happened. We did flag that issue. I want this body to realize that we're not ignoring it and it's something that we had conversations with the applicant's council about. In addition to that, as I remember from going from the October public hearing final decision to the November meeting, there's a piece in the beginning of that conversation in November that the chair sort of identifies the specific statements from the actual minutes that relates to the scope of you as ZBA members concerns about the representations that were made and really those representations focused on a couple interesting pieces. He says that maybe draws to bear on why we went out to get the engineering report and maybe sort of focuses the conversation of where you want to go with it. Appreciating that we don't currently have a variance request in front of us on the temporary construction draft. That's got to be dealt with first through a compliance enforcement effort on those counties. It really had a question of citing from Mr. McKellar the piece is related to his position that if you had direct access off the public road, it would not quote really be a feasible option. It'd be more impactful. And there's some additional statements that the chair quoted from Mr. McKellar representation really focusing on this idea that it's just not feasible to build off Bluff. In fact, there were questions raised about the impacts on wetlands if you came off the south side, but what would be the difference if you did it off to the north? That question was raised and the response would have really related to essentially the orientation of the building, the size of the structure as well as the patio of the pool and that wasn't further developed at the October meeting. What my understanding from the November ZBA meeting is that the question then becomes we will provide the charge to our township engineer to provide us a neutral report as to are those statements that were made at the October meeting accurate to the extent that it is one more impactful, that it's not really a feasible option because at the time of the October meeting it's fair for the ZBA members you all read the packet and you did have the permanent approval in front of you where it had even indicated that legal staff review had assessed in this notes that there was no reasonably prudent

alternative and we had asked and there was an indication that you would repeat those alternative drives. We pressed based on information provided by the same engineer that provided the applicant's engineering letter here. the townships engineer now has sort of fairly assessed the extent to which is that easement drive option A. As you're identifying it is that option something that is protect is actually less impactful and that was the charge we gave the township engineer and the township engineer developed those mathematical calculations to try to provide you a means to take a sort of a qualitative approach but even a quantifiable approach as to the mathematical basis of exactly how much impact would happen to the wetlands. And note that on that impact review, it's twofold for purposes of the township. Mr. McKellar disagrees with us on this, but the township zoning ordinance as it currently reads the piece does address both the wetland itself plus it addresses the area that's within the wetland setback. And when you look at those impacts, you get a sort of calculation showing you what's least impactful as well as sort of the township engineers thought process on exactly what would still provide an all-season road for emergency access. You have that information to look at and I do want to address the chair's comment about the extent to which the report doesn't necessarily assess the site building and structure itself and whether that will impact option A, B or C. We did raise that with the township of engineers. If he is prepared to address it if the ZBA wants that answered on this record since he's present, we should certainly have him speak to the report if you have questions on any open issues. And then on the last piece as it relates to Mr. McKellar position I think we raised this previously with the ZBA if not it becomes a portion of the current pending litigation, which is that there was an immediate offering by Mr. McKellar after the temporary construction work was put in to provide for restoration of those trees that were cut. But the one thing I want to remind you about the restoration, you guys probably all appreciated that as you're hearing these statements, but the one thing I want to remind you about the restoration, fully appreciated the elevations of the site that's being built. When you look at those elevations, you think about restoration, it's certainly still currently under the land use permit. Even though there's a cease and desist, nobody's suggesting that it's not as currently proposed in those site plans. You're going to end up with an extensive amount of the bluff removed based on the documents that have been given to you that have been approved to sort of proceed forward with that use by right. I just want to be clear. There have been offerings that the township would be willing to address as it relates to tree cuttings, pre-plannings, the restoration of the temporary construction, the stabilization particularly for the neighbors to ensure that the driveway was not undercut as well as the additional landscaping for those neighbors for purposes of sight and other sound benefits. But I don't want anybody to sort of be left with the belief that the bluff would be put back because the plans that they provided us still have elevations that show very extensive cuts for purposes particularly of their patio and the pond that sits or sorry the pool that sits adjacent to the house. I just wanted to make that clear. And then for purposes of options, as the chair did identify; I do think that a rehearing on this issue is something that's a pretty significant move to take since we did have an opportunity at the October public hearing to address the record and the questions. And really in November, we decided that the issue was to discern the extent to which Mr. McKellar or other information that was present. You may have the flag misrepresented the basis upon which you reached a finding of those standards, but it would be a significant move for a rehearing. And if the ZBA thinks the threshold is that high and that potential for engineers' report doesn't get you there, that's certainly one of your options. Otherwise, I do think since you are a ZBA with some ability to impose conditions, although this is already after various McKellar offerings, maybe those were voluntary that if these to get a motion to include some incorporation of these pieces that you'd like to see restored, it's probably something that you could also get accomplished and sort of determining that

you're not very satisfied with the record and the way the process played out. But to the extent that at least option A does appear even to be confirmed by the township engineer to be a reasonable alternative, we would like to see some of these other items done as a part of this process to at least clarify current what you might see as sort of submitting a damage of the resource and then happy to answer any questions you had that you might not ask some technology issues.
Dolton: questions for the attorney from the board?
Cowan: what would the structure that of a motion to restore let's call it a motion for restoration prior to project completion look like? How would that be worded?
Patterson: that you can include it in as part of if you were to do that condition. You'd be reaffirming the October 8th, 2025 approval. And that motion could indicate the applicant's got to certainly comply with the various approval and that you want out there to do restoration. Then the question is what restoration and so far, based on what I've learned from the record, there's probably three potential maybe buckets. One is obviously the temporary construction restoration that's removed although that is an issue for which we'll have to take up and anyways and then two is the trees. Now remember that we have conversations about the restoration options like what we'll call B or C. I guess C being much more impactful to the tree resources. However, that's why I was making the comment about the elevations of the site. You're not going to get all of those trees planted and still allow that patio and that pool to actually provide some space to use, right? Because of the elevation that's getting cut out. At this point purpose of this evening, unless McKellar got specific tree caliber restoration plan in his suit jacket, we would have to sort of future conditions to indicate that he would probably want to give some discretion to the zoning administrator to ensure that it provides fully restoration of the trees for which didn't need to be cut for purposes of the land permit that was issued. Probably the best that we can do this on that issue. And then the restoration on this temporary construction drive. McKellar indicated a timing component there for purposes of it already being touched and it's currently in the wetland setback, not technically in portions of the wetland itself. And then the third thing would be the actual topography pieces. You heard about an indication on restoring the bench cutting and the other elevations and so that could all be done as part of the landscaping plan, but that sort of really does need to be deferred to some additional administrative review by account with the township engineer and or zone administrator.
Dolton: one other thing I wanted to just make sure for purposes of making the record complete. I did double check. We think it's the driveway permit that approved the actual easement road, which what we're kind of discussing is option A. And I thought I heard but I had sort of bad audio that there was a denial or something in the complaint or the motion. So, I don't know what we should probably find it but I can't sort of see anything in the attached pleadings that's a denial indicating that option B or C was not acceptable.
McKellar: we're talking about the temporary drive permit if I recall and that should be in there. I know it is. One of the things we can offer to narrow this is there is the restoration area can be defined simply as the final location beyond the you know retaining walls and stuff like that where there were trees cut that would have been retained that we can basically go out there and essentially agree that as soon as snow melts we can go in and count the stumps we can report back Kopriva can come out with us and count them. We can delineate by survey the location of the retaining walls and say everything north of that everything you know whatever location anything of a size will be replaced with at least a 6-inch caliper mature tree. Additional things we will also offer would be native ground cover because the canopy there actually made it so there was very little ground cover. We had kind of erosion issues to start with so we can add the additional ground cover and any areas that were outside of the retaining

walls or construction area where there were trees cut. We would welcome Kopriva or whomever to come out as soon as they can and walk with us, identify the trees that were cut and do replacement. We can also submit a condition to submit a detailed landscaping and stabilization plan for north of the garage between that and the driveway. That would be in addition to the current plan that's in place. Regrading and topography final grades that's already part of the permit process. We have to do that anyway. And then we would do a date certain or I would say an event certain on the restoration of the temporary drive as the second is close to weather. I'm talking just sheeting. I'm not you know be wrapped. We're talking just trusses are up. That's it. We're out. That's going to be a significantly shorter time period than before. and then restoration efforts would have to begin then to restore those grades and replant those areas, reestablish that and we can commit to that. So administratively, if that's conditions are appropriate and they go to Kopriva and Patterson and they feel they're appropriate and they're protective, we'll jump through whatever hoops to make that and a financial survey for any activities we would also offer. And not only that agreement, but this is also a big thing that's lost. Then they don't get access. They have to go get a warrant, you know, or something like that to access the property or go through the court and get one. And we would offer that in case of a breach, the township would be able to we would be giving access immediately for their efforts to make the restorative efforts. You know, those conditions. Anything else you guys can think of related to it, I'm happy to try to narrow and define the best I can.

Visger: you think you can really do that? Get to a point where you can abandon that temporary road by spring?

McKellar: the issue is when can we get the wall? Now, we're in frozen ground. Can we get the wall warrantied even in the winter is a little bit of the problem. What I can tell you is the timing imperative would be the second it's sheeted and I'll talk to the builder too. If there's a chance, it's just to the point where trussing is up then we'll back off the sheeting too.

Visger: you have got concrete trucks coming in after that you got heavy material loads coming into the builder.

McKellar: shouldn't have any concrete coming up after. Well, I don't think we have any concrete trucks coming in for the foundation or the wall.

Visger: you have got to pour slabs before you raise your house. And you're talking about the garage and the basement and you still have to get the pool to go in. You've got heavy concrete trucks coming up there for the pool. You've got tons of materials coming in.

McKellar: that is what we have here. Again, I have talked to the builder, but I and Dean Adams, you want to come up here and because there are some things we can do that would be out of order generally just to make this work.

Visger: are you comfortable with restoring this slope so quickly?

Kopriva: Patterson, can you hear? (no response)

Dean Adams from Bay Area Contracting 970 Emerson Road Traverse City 49696

Adams: just want to make sure you guys realize that the temp road was a two-track originally. There was access there to an old farm that was used and two thirds of that is now a retention basin for storm water. So, if you look on the storm water permits, you'll be able to see that. Now your question with materials and everything. Yes, that was the plan of using that space down below to get materials up and things like that for the concrete walls, for the flat work, for materials, things like that. That's why originally, we went to the road commission in mid-July and got permission for that access. I also told Kopriva in her office in August about that access that we do need because we are planning on overall

construction of the schedule and how we can get materials there, how we going to do it safely, how we going to do this with the least impact.
Visger: so, he's proposing that by springtime you're abandoning that temporary road.
Adams: well, I didn't say springtime. I said I being affected to weather and then the house and that's always it fair to say that.
Dolton: I understand the concern about timing, but I guess in my mind it's more the extent of the restoration that's more significant than the timing of when that is.
Visger: the restoration will go quick I mean given the right period of time. You know with the weather, but you know the routing of materials up to the top of the hill to build that house is going to be until the end of construction.
Dolton: any other questions with the builder or McKellar?
Visger: what would it take to upgrade A so that you can use that as your permanent access right now, Your temporary access?
Adams: we would need more land from the neighboring property because of the tight turn Because of the turns and the size of the equipment we need to get the stuff in. The one thing I would say is we can work with you on this, but it's possible that we can get a break of weather and the basement floor and the garage essentially within the same time frame. The only thing we would probably say is the placement of the pool would be the only exception, but that can probably be done relatively soon.
McKellar: listen, we understand there's going to have to be significant changes to what would normally be a very good construction plan, but we're willing to make those and sharpen our pencils to do that. I'm trying to do that. If we have an opportunity to take the builder with Kopriva and Patterson and do something significantly shorter in time and a significantly more impactful restoration than what was previously approved and they're comfortable with that, then we could move on that.
Visger: what would the timing be? I mean, is this a two-year project?
McKellar: it really depends on the weather now. We lost a window. We lost the opportunity. You know, you as a civil engineer know this is, we have a whole different site we're dealing with now. So, we have difficulty. I don't know that answer, but before this was a less than two-year construction path, and the road commission only gave us access for that temp permit through July of 2025 originally. We had one year access for that construction drive. And he did say that we would have one renewal. We had a good discussion on that. He will probably allow two months,
We're talking about August, September, and that's from our last discussion in July of 2025. Here, if we went from frost laws up, how many months until we could probably be out of there with a different right now? Three months. We're dealing with April. You're dealing with April, May, June.
Visger: you're hitting that July original permit that we currently have.
McKellar: I guess let's say if it's 18 month or two-year project, I guess we say we could probably find something where we're not using that drive within 6 months of construction start of the foundations and you know moving away to restore that before the completion.
Adams: that's something we can work pretty tight on. I mean these are things that normally you wouldn't do and they're going to be extraordinary costs for the applicant to move heaven and earth. I don't want to necessarily restrict our folk's possibility but we want to make a concerted effort to offer something significant.

McKellar: I would consult and defer to a consultation condition where Kopriva and Patterson review would do that and speak to whomever they need to speak to at the township to get comfortable about it beyond their own interpretation. But it would be a significant shortening up of that timeline.
Dolton: Thank you.
Adams: I just want to make sure the reason why it's so vague on my part is I'm going to have to consult with Ryan Cox, our civil engineer. It didn't depend on the runoff in the spring. I mean, we have to be smart about it; I have to be concerned with the neighborhood to the north. We just don't know, you know, weather that comes in. I'm not going in there because I have deadline. I have to be very smart because now I have all the liability. That's why I'm trying to let you guys know you have worked with us. I have listened to my experts. I have to make good decisions to make sure this process goes really well and we get everything stabilized. Thank you.
McKellar: to put a cap on it. We've got smart people at the township that can help and you know I kind of see this as a timing imperative once you start to come to a certain point in time to be a certain period of time or a certain event that happens before the restoration starts subject to events, weather, and things like that. Smart people can really get down there, but we're making a commitment on the record to be aggressive.
Dolton: I'd like to attempt to refocus here. We've heard quite a lot. There's a lot of information here. I'm going to attempt a summary, but I want you all to tell me where I'm wrong or correct or not, so we can move forward. What I'm hearing is given the representations that were initially made and the fact that a construction road basically was placed in the very location that was indicated was not feasible and environmentally unsound. Unfortunately, the construction belied the representations that were made at the October meeting and we have an engineering report that indicates there is feasibility of other options. They said it's more impactful on the setback, however; to the point that perhaps there's not even a setback that would be in a wetland, a wet land that would require a variance to utilize right off the subject parcel. It seems to me that this board would not have approved the variance in the October meeting if we had all the facts that we have today. Is that a fair statement? People who voted, would this have impacted your vote?
Cowan: so,I see where you're going. The only thing that I don't know that if I had known in that October meeting what sort of equipment was going to be necessary to do the work in the house site. Cranes, huge trucks, if we had known that would have changed the bridge that was going to be built there, which would have potentially made it more impactful.
Visger: it should have been from very onset you don't design a road without realizing you got to get there to build the structure on the other side so that's the third mistake, the construction road so they wouldn't have needed that though had they used an option that didn't require crossing that. Sure. . .
Cowan: the construction road was the way to get around from building or they should have designed the crossing substantially and with less of a curve.
Dolton: that's not to make a point, but that's water under the bridge at this point. We have a couple choices here. We can potentially move to a rehearing of the variance or we can as Mr. McKellar and their builder has suggested perhaps accept a more aggressive or more substantial might be a better word restoration plan as a mitigating factor and allow the variance to stand. We could do that via a motion that such a restoration plan be submitted to the township for Kopriva's review. And at her approval of that plan, we would then kind of dismiss this whole project of reviewing the variance request. Now, I would personally be hesitant to dismiss that now just based on verbal representations. I would want to see a plan that the township agrees is significant.

Visger: there's a lot of detail that's going to go into that schedule and plan to make that happen. That should be discussed openly and maybe given an opportunity for the public to comment.
Dolton: that would basically impose that we hold a subsequent kind of special meeting to review the restoration and schedule and if we find that acceptable more likely than not, we would then either say nope not satisfactory, we need to move to a rehearing or we accept it and put this issue to bed. That's what I'm thinking. How does the board feel about that course of action? Alternately, we can move to a rehearing.
Jerman: is that in our purview to review that and approve that or is it not in our purview? That's my question. Once again, I just want to make sure we stay on focus. That we are holding ourselves accountable to what we're supposed to be doing. And I understand that sometimes it's a tug of war, but we also need to make sure we push certain elements back to the township and to zoning. That they have to make sure that they are reviewing and if there are issues that have to be addressed other parts need to do that, but we need to focus on what?
Dolton: to get to Jerman's point, the purpose of holding a rehearing is to basically put a stake in the ground saying that we believe that representations that were made at the meeting were misleading. to the degree that the board voted in a manner that it would not have otherwise voted based on subsequent information that's been provided. To address your concern about whether or not we have what authority do we have. We could frame the motion such that we will in fact schedule such a rehearing and that evidence presented at that rehearing we may find satisfactory so that we do not revoke the variance. If we find the material not sufficient then a potential revocation will be voted upon.
Kopriva: Patterson, he's here on the phone now.
Dolton: Jerman raises a good point. Patterson, is that a viable option? We have to be careful what the ZBA actually has powers to do. I did articulate that the ZBA feels that the representations made at the October meeting were at best misleading.
Patterson: I understand and have a couple of comments. One as it relates to having deemed that you think they were misleading or lack of having full context, the question still, at that point, then questions whether it rises to the level to revisit your prior determination on the standards and the zoning ordinance for purposes of staying within our lane. It doesn't expressly authorize our ability to rehear a prior decision. So, we would be doing this of our implied powers from our ability to sort of have ruled on the original variance. So, I do and that's why I commented earlier. It's important that the ZBA finds the threshold is actually high enough for purposes of the statements made by the applicant that it would completely undermine your prior proceedings, that you would want to go down this road. And I will provide, that in my experience in doing this for a long time and having been at a lot of ZBA meetings, generally speaking, the extent to which there are inaccuracies in the record, we would run that through an appeal process. I guess the issue here is that our appeal process had already passed by the time we came to learn of the sort of construction of the new temporary road. In addition to that, we are going to have to address the temporary construction road. I don't feel like you have to be concerned about doing a rehearing for purposes of ensuring that's adequately resolved. Then I do want to address the second pathway that was discussed of a motion for purposes of at least now that I have heard all your comments. You all would agree that it wasn't properly presented the way that you would have thought was appropriate and fair. That gave you a fair opportunity to at least have enough information to then ask follow questions. Had you been presented for even the additional construction process, you would have probably asked additional questions about the comments made related to the potential for an entrance off Bluff Road to be more impactful. But what I would say on that pathway is I'd be a little bit careful of seeking a meeting to have additional plans presented only because those

plans are going to come with some particular sort of unique specialized knowledge that planners have like as it relates to tree caliper size, tree species. Essentially, we're looking for a landscape plan for purposes of a restoration as it relates to grading and timelines. I do think that you're sort of outside your powers to some extent of getting into the details on that just because we came here originally under a variance decision. We're now trying to determine whether we're going to reopen that case. Getting into the granular pieces, even the planning commission of the township would defer to recommendations from the planner and the zoning administrator on some of these sort of individual restorations. If you go in that direction and you're satisfied with the information from the township engineer, it would make sense as we did last time at the November meeting to identify those substantive areas and then charge Kopriva with the authority to make a final determination of what's acceptable. That would come in the form of go ahead.
Cowan: would that come in the form of a motion and who would we make the motion to?
Patterson: yes, it would come in the form of a motion. I did draft example motions for purposes of the planning commission just to address what I thought could be any of the potential paths in which the ZBA would endeavor to go down. One of the motions that I did prepare, if you have it in front of you, the first one at the end of that motion relates to addressing some of these items related to restoration. There's language in that motion at the end which might assist you in your comments. We could add some pieces to the end. It currently addresses the temporary construction. It does not address the planting of trees and it doesn't address restoration of the side grading or bluff. There's information on the bottom.
Cowan: you would say then that this would be additional information would be part of a motion to confirm the prior variance.
Dolton: the dilemma that I'm having with this, Patterson, is that and I hear your point. I mean the rehearing and the evaluation of the variance request is to evaluate the information that was provided whether that was correct or materially impactful in the decision making of this board. And the problem that we're having here is we're trying to find kind of a compromise that works. But the compromise we're proposing is out of the ZBA's hand, so to speak. It's not something; it doesn't address whether or not the variance that was granted was correctly granted or the information provided was correct. We're kind of punting that down the road a little bit and saying, "Well, if you do this additional work, we'll give you a pass." But I don't really see a method forward to do that unless you can articulate one.
Patterson: I see you attempting to accomplish certain goals because you indicated that you're a little bit stuck in the extent to which of the original standards are met, yet you would like to determine a process in which compliance could be achieved and you feel like you're punting it down the road. So those things are not connecting for me.
Dolton: how does the board feel? What would others want to do in this situation?
Prescott: as much as I don't like this situation, we asked our township engineer to provide us with certain information in comparison to what the applicant provided to us. Was that the best access to the house and he has clearly in this report come back and said that option A is the best. We don't have A and we do not as we've learned though I believe that the construction road needs a variance, but that is not for us to decide. That is for enforcement to decide. I mean we confirmed your perspective which was very complicated. I wonder if a lot of this isn't just compliance.
Visage: we did our part back in October. We approved, you know, a driveway as they have a significant compliance issues on the temporary road and access and so forth. I hear Jerman, to what degree do we as ZBA get involved? I'm confused.

Cowan: I'm sort of in agreement with Patterson. We did get a little bit more information, but we could have asked for that information in October. And for me this has been a tremendous learning experience. It's clear to me that construction road ought to be included in any plan that you guys look at and approve. But this is a Humpty Dumpty, as I said, fallen off the wall on this one. And the only thing that we can do is to hold the applicant's feet to the fire to restore the hillsides, replant trees, cover with native ground cover and move on.

Dolton: Jerman, your perspective.

Jerman: my perspective is trying to make sure that we're staying focused on what our role is. And I know that can be difficult sometimes. What I hear is that the temporary road access that has to be dealt with outside of here and the information that you guys requested from the township engineer which you did. They came back and clearly said yes option A is the best option. I do think that what we're being asked then would be to have some supplemental asks. it would be a motion to move forward with a supplemental asks for the applicant regarding restoration clauses. What is outlined in there that motion would be added into there so they would be responsible for coming back with what that would look like in terms of restoration.

Cowan: I said the motion that applicants submit a restoration plan for the temporary construction road and adjacent slopes. Such a plan should include restoration of the construction drive and of existing vegetation or pre-existing vegetation restoration of original topography and landscaping and it relates to when are you going to get this done?

Jerman: I understand that there is additional information that came to light afterwards. What you were saying Dolton was you know trying to go back and maybe we wouldn't you guys wouldn't have made certain decisions but that ship has sailed and it's trying to take the information of where we are at now and how we do be the best stewards from here on out and working with that applicant to make sure that its restoration is in place right

Prescott: we can't do anything about the restoration. All we can do is in the motion charging our zoning administration and zoning department because that's in our purview, that's how I see it.

Cowan: could a motion be structured such that if that once the restoration plan has been submitted to the satisfaction of the planning department of the township, that we would then conclude that our concerns regarding the variance approval have been satisfied.

Dolton: does someone want to make that motion? Do you want me to read what a motion would look like or…

Cowan: I basically did that. Let's No, that's fine. You're good.

Dolton: that submission of a restoration plan for the construction road and area surrounding on the parcel in question. Once that has been submitted and approved by the planning and zoning administrator, that will satisfy our board's concerns regarding the variance approval and that no further action will need to be taken. And that is the motion. Let me rephrase. They will conclude that our concerns regarding the branch approval have now been satisfied.

Cowan moved to approve the motion as presented with a second by Jerman

All right. Roll call vote. This is significant enough to require a roll call vote.

Kopriva: before we do any vote on this, is there anything additional that the members need to make comments on other than voting yay or nay to the motion?

Patterson: no, the only other thing I would have said is to ensure any position that they had on the representation, but they've made that clear. I'm good with the motion as presented.

Visage-I agree. Prescott- agree. Dolton-yes, Cowan-yes, Jerman-yes. <u>Motion is approved</u>.

Dolton: after a rather exhausting process, we are through this topic. Thank you for everyone's patience with respect to the other two requests, let us move forward here. Let's all take a couple minute break here and two-minute break. Five-minute break.
The board takes a 5-minute break at 8:45 p.m.
The board resumes at 8:50 p.m.

B. Continuation- Public Hearing for Request 923 to demo and rebuild a single family dwelling in the R1-C zoning district

Request No. 923, Zoned R1-C
Applicant: CF Campbell, JML Design Group, Ltd., 225 E. 16th St, Ste. B, Traverse City, MI 49684
Property Owner: Acmepen One, LLC, 10602 Bluff Road, Traverse City, MI 49686
Property Address: 10602 Bluff Road, Traverse City, MI 49686
Parcel Code #28-11-625-009-50

1. Requesting a variance under Section 7.5.6 of the Zoning Ordinance to replace a single-family dwelling.
2. Requesting a 25- foot variance from Section 6.8 of the Zoning Ordinance to construct a single-family dwelling in within the required 25-foot front yard setback. 1 inch proposed setback.
3. Requesting a 14 ft 10 inch variance from Section 6.8 of the Zoning Ordinance to construct a single-family dwelling within the required 15-foot side yard setback. 2.5 inch proposed setback.

4. Requesting a 54- foot variance from Section 6.8 of the Zoning Ordinance to construct a single-family dwelling within the required 60-foot ordinary high water mark setback. 6 foot proposed setback.

5. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a single-family dwelling exceeding the maximum required lot coverage of 25 percent to allow for 40 percent lot coverage.
6. Requesting a variance from Section 6.8 of the Zoning Ordinance to replace a legally nonconforming single-family residence on a lot which does not meet the minimum required lot size of 20,000 square feet or 100 feet in width.
7. Requesting a variance from Section 7.4 of the Zoning Ordinance to construct a new single family dwelling in the floodplain.

Dolton: we are opening the public hearing and I will have Kopriva summarize the request and then we will move forward.
Kopriva: this has been in front of the ZBA a couple of months. The last time around the ZBA requested the township provide square footage calculations of the existing structure. We had the township surveyor through Gourdie-Fraser engineering go out and evaluate the foundation and did their calculations of the structure. You have their survey that's attached as well as their pictures that were there. They didn't go inside the house or anything. Everything was just done outside and they

evaluated the foundations and gave some calculations for that. You'll also see in your packet that the applicants provided additional calculations and I believe Visger had asked for a diagram that showed the differences and what was there and then what was being proposed and there are some diagrams or at least some calculations that the applicant did provide additionally in your packet as well. Tonight, I did provide on your desk the original staff report, which was dated June 11, 2025. I noticed in the packet I didn't have some of the criteria that you would need to be making your decision. It is in the ordinance so you do have it, but kind of as a quick reference, if need be, you do have the staff report which talks about the different sections in article 7 related to non-conforming structures as well as variance criteria in section 5.7.3.

Dolton: there's seven variance requests here. I would like the board's opinion whether we can handle all seven of them in a single set of basic conditions and motion. In my view, in the prior hearing of this, the applicant needed all the seven variances to accomplish the reconstruction of the property: the replacement of the property in essence. So, are we comfortable treating them all as a single set of basic conditions and requirements under 7.5.3?

Board members all said yes.

Dolton: Or I should say 7.5.6 to be clear. Moving or replacing a non-conforming structure. With that in mind, I'm going to very quickly read through all seven. They all relate to the reconstruction of a single family, the replacement of a single-family dwelling. I'm just going to articulate the variance and not continually to repeat why they need it. Number one, requesting a variance under 7.5.6 to replace a single-family dwelling that has special conditions. request a 25 ft variance from section 6.8 to cons within the required 25 ft front yard setback. The setback would be 1 inch requesting a 14T 10-inch variance from section 6.8 eight within the required 15-foot setback which leaves a 2 and a half inches apparently. Proposed setback requesting a 54-foot variance from section 6.8 within the required 60-foot ordinary high water mark setback. The proposed variance is a 6-foot proposed setback. the variance would be 54 feet. The proposed result would be a 6-foot setback. Requesting a variance from section 6.8. exceeding the maximum lot coverage of 25% to allow for 40% lot coverage. Number six, requesting a variance from section 6.8, which does not meet the minimum lot size of 20,000 square feet or 100 feet in width. And lastly to request a reconstruction in the flood plain. So, all of those variances are necessary to replace this non-conforming structure. Any questions about that? At this point I like to ask the applicant to come up and make a presentation.

Andrew Blodgett from Parker Harvey Law Firm, 901 South Garfield, Suite 200 Traverse City

Blodgett: yes, to reiterate, we are in section 7.5.6. This to replace the same structure. All those numbers that were read are the same or smaller than the structure that's there. So yes, you hear that we're very close to the lines and things. That's the current situation out there right now. and we need the variance under 7.5.6 to demolish and replace it. I know most of you know that. I know some of you are newer here. I do want to add the numbers that Kopriva put in the agenda and that Dolton just read. Those are updated numbers from the October meeting. Recall that there was a question about if the setback numbers have been revised after we revised the plan to get rid of a section. These new numbers here are revised from that. We have just I'm kind of going through here. Check boxes that we've talked about before. This will replace the existing building. Last time there was a discussion about square footage. And I'm just going to orally state what has been provided. It was basically either 1300 square foot or 1,600 square foot. Kopriva commissioned GFA to go out. This is in your packet. This is their numbers. You can read that and then Campbell provided this. I have a larger copy here. And this is what I want to point out. This this first one here shows existing roof area. And why do you care about that? That's we can see this is where the 1600-foot number comes from. And Campbell's number JML

was 1631. Our surveyor back in the day was 1652. GFA is 1664. We're talking about inches when you when you do this for a square root of that. And then this second one here lists for you the foundation area numbers. Campbell's initial number was 1307. Simmer from the June survey was 1328. GFA for the township was 1334. Honestly, if this was an actual rectangle and you did the square root, it's like 36.15 ft versus 36.52. These are these are real close numbers and though the delay was of course frustrating, I'm glad we ran this into ground. This to me really outlines why the numbers were different and that we're talking inches or less than inches here when we talk about the square footage and in these diagrams as well. You have the proposed, which is the new building and after all that narrowing down and getting the right numbers the most important thing is will the proposed foundation area be less than what is out there and the answer is yes.
Dolton: and what would that number be?
Blogett: that would be what's on this diagram and 1,206 is the proposed foundation area. The proposed roof area with the eaves is 1509.
Dolton: the specific variance numbers are based on the roof area overhang. All basically the roof area.
Blodgett: Campbell can correct me. The dimensions from these setbacks. Yes, there is a variance on lot coverage and honestly off the top of my head, I'm not sure which one is used but I wanted to clarify that yes but that was your question does this township go from the eaves and yes the dimensions that you see in here this is the simplified drawing. That's from the eaves to the property line side. Yes. That's the general basis here, we've run these numbers into the ground with surveys and we have the right set of numbers. I can confidently say that the final building is going to be smaller, lesser than the existing building and then if you're wondering why that's one of these specific criteria of 7.5,6, we need to replace it. We've met that and we are just asking to replace the current building make it a little bit smaller and make the only use of this land that we can by replacing that building.
Dolton: questions? None? I think that once a motion is created, we'll want to include a condition that the final structure not exceed the 1,206 foundational area. Would that be satisfactory? Want to make sure that we're not limiting you in some unintended fashion.
Dolton: I'm going to let Campbell answer that because I can't count very well. He's the one who's got to certify it. I'll let him say yes.
Fred Campbell JML 225 East 16th Street Traverse City
Campbell: two comments. The building is out of square, out of level, out of place, and doesn't meet any requirements. The revised numbers square the building up and do it to a block module, which is why my number is always going to be less because we straighten the building up. It's square and it's to a block module.
Dolton: the number I just quoted is adequate.
Campbell: yes,
Dolton: because I know the last meeting we've kind of pushed this and was concerned over the square footage calculation because I was specific in the variance request and square footage does not normally include non-enclosed covered patio areas and that's what kind of frankly blew up the meeting last go around.
Campbell: I apologize because the number was that big and I couldn't read it.
Dolton: I want to commend you for cleaning this up and we can now move forward.
Visger: the setbacks as measured from the east. I'm looking at the pictures of the existing house and they don't have any gutters. They do in one case. So is that what would be replaced with something without gutters?
Campbell: yes.

Visger: because I think our zoning ordinance says it's measured to the furthest projection.
Campbell: and the second comment I was going to make is the simplified drawings are nice. Unfortunately, the ordinance requires us to put everything on.
Visage: right.
Dolton: does the board have other questions of the applicant. Hearing none, I'd ask for persons wishing to speak in favor of this request come forward
Dave Anam 10617 Bluff Road Traverse City Mi
Anam: the house is right next to my property and I'm all in favor of it. I hope you guys just bring some peace to our neighborhood and let Justin Helton build a house and get back to some pride in our neighborhood and just everybody stop fighting.
Dolton: anyone else wishing to speak in favor of the request? Anyone wishing to speak against this request?
Zachary Stewart Attorney with Alward Fischer 412 S. Union Street Traverse City.
Stewart: my firm's been retained by neighbors to this site and you guys have seen me at these meetings the last few times that we've discussed this. You know I appreciate your comment, Mr. Dolton that we asked the applicant to go through all these hoops so that we could come to this final resolution with these numbers. I appreciate what the applicant has done and obviously the determination of what that square footage is and the same thing with the setback requirements. The only thing I'm here to say tonight is that we want to make sure that there's any variances granted or done so with specificity as is required by the ordinance. I would also ask that we made that one condition you put forward Mr. Dolton. And then the second condition I would ask for is the same thing with respect to the height in the application itself. It says that it's only going to be going up 3 feet. and that that we keep that same 3-foot height increase as well. And then with respect to all the other variances just let's keep those as specific as possible so that we don't have to come back like we had to sit here for the last one so that we know exactly what the variance is and what's allowed and what's not allowed and it's not carte blanche to start doing whatever is within their purview.
Tony Glinke 10591 Bluff Road Traverse City Michigan
I'm a next-door neighbor of this property. This feels like deja vu all over again because this has been going on for 4 and a 1/2 years now. For the record, I have never had a problem with rebuilding the structure that is at 10602 Bluff Road. It was pretty much demolished and then left to just rot for the last four years as near as I can see. But again, I'm just a next-door neighbor. So unfortunately, I do not trust that this is what this developer will do. It's taken us 4 and 1/2 years just to get an accurate size of the existing home, which is insanity. And we've been at probably five of these meetings now. We have gone over this because of various truths and half-truths and outright lies. I would ask for the township and the ZBA's help to stipulate very explicit and particular requirements for what can and cannot be built. I ask that you hold this developer accountable to build to the absolute letter of these requirements. I guess at some point Army Corps of Engineers can get involved, State of Michigan EGLE can get involved or Traverse County particularly for the septic system and then obviously Peninsula Township in terms of building and zoning requirements. Specifically, the size of the house and then the height of it. Again, we could have settled this four years ago, but that's just how it goes sometimes.
Dolton: I do have a further question actually on that point. One of the things, the primary thing that caused a failure of the variance request three years ago now maybe four at this point, was an intensity of use concern. And while I just addressed the size of the foundational area, I think also we would like to address the square footage of living space. What is the proposed square footage of living space that the new structure will contain?

Blodgett: while Campbell is looking that up, I will remind you without using numbers, we are deleting an upper dormer area. So, it's going to be less. And there's a long history with that. It was approved as a variance and told it couldn't be used as living before our time. It probably was. We are getting rid of that and I think that's clear in the plans and has been discussed before.
Dolton: I appreciate that and we just want to articulate that as a condition of the variance.
Campbell: unfortunately, I do not have the drawings with me for the completed building. The foundation area is 1,206 square ft. It is made up of an 8-inch concrete block foundation.
Dolton: the living space would be somewhat smaller than the 1,002 perimeter. If we were to make a requirement that the living space not exceed the foundational area would suffice.
We're talking small dimensions.
Campbell: if you want, I could do a quick calculation trying to figure the perimeter.
Dolton: I think just not to exceed would be adequate.
Campbell: the simple fact of the matter is we will pin the foundations and we will verify that the outside foundation meets the 1206 square foot.
Dolton: we just want to avoid the potential of creating a second floor within the structure that increases the intensity of use. I just want to put a similar limitation to be able to say that the living space will not exceed the foundational area.
Campbell: to reiterate, there is no second floor. We have eliminated the second floor. We have eliminated the stairway to the second floor. We have eliminated the building out of the road right-of way to make sure it is less nonconforming and less intense.
Dolton: we do appreciate those efforts. I would like to address the concerns of some of the neighbors who have had some concern about such things. I'm proposing potentially we would put conditions that the foundational area and the square footage of the living space does not exceed 1,206 square feet.
At this point I'm going to close the public hearing and we'll turn to board deliberations and vote. We need to discuss this with respect to 7.5.6 as well as the basic conditions under 5.7.3. So, let's first tackle any discussion about what's necessary under 7.5.6. The move to replace the structure needs to be less non-conforming than the previous structure. As the applicant has indicated the footprint is slightly smaller. It has been moved out of the road right-of-way. The structure itself, there is a new stairway for access. Do you want to describe how that works for the benefit of the board?
Campbell: there was an existing stairway that ran north south and was eliminated whenever the new retaining wall went in. The new stairway is the same square footage as the existing stairway is and simply is in a different configuration than what the original one was.
Dolton: questions regarding that? Hearing none. Another condition under 7.5.6 is there's increased safety to the residents of the structure near the traveling public on the road providing access to the parcel. Given that they're pulling it away from the roadway, it appears that has been met. The other is safety and substantial justice is achieved that will be addressed under the basic conditions. The variance also allows it to encroach in the setback of the ordinary high watermark, which the existing structure now does. Their proposal is to basically stabilize the shoreline and the structures to raise it higher to get it out of the flood plain and out of the high-water mark in the flood plain and any concern about water levels. I don't see any other limiting factor under 7.5.6. Anyone have concerns there? No.
Dolton: I think we're prepared Kopriva to walk us through the basic conditions. We will handle all seven variances simultaneously. all six conditions must be met. Any failure of any one of the conditions will result in a failure of the variance request. And when we vote we need to justify our response.
Kopriva: I am reading from section 5.7.3 variance criteria basic conditions

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.
Visger: yes, the condition has been met agree and you are replacing the existing structure making it less nonconforming.
Dolton: yes, the condition has been met. The structure needs replacement and it's not the responsibility or not the result of actions of the applicant.
Prescott: yes, for reasons that my colleagues have said.
Cowan: yes. I agree with the previous statements by other members of the committee.
Jerman: yes, I agree with the previous statements from the committee. Nothing new to add.
Kopriva: that's five yeses. there are zero nos.
B) The need for the variance is not the result of the actions of the property owners, self-created or previous property owners.
Cowan: no. That is not a not the result of the property owner condition. The condition is met.
Kopriva: so, you're actually yes.
Prescott: the house was built in 1957, which predates the zoning and the need for the variance is sort of baked in as its non-conforming.
Visger: yes. It's not a result of actions by the property owner.
Jerman: yes, I think with the other information that's been provided, it's an older building. it's not something that is done with intention and it needs to get addressed and fixed.
Dolton: yes, conditions met. this is a non-conforming structure that needs replacement.
Kopriva: we had five yeses on that one.
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 permitted purpose and will render conformity with those regulations unnecessarily burdensome. The fact that a property owner may incur additional costs and complying with this ordinance does not automatically make compliance unnecessarily burdensome.
Prescott: yes, this condition is met. Strict compliance with the ordinance is not achievable.
Jerman: yes, just the information that's been put forth is that it's not able to be compliant with the current ordinance.
Cowan: yes. I agree with the other committee members.
Visger: yes, the existing structure is non-conforming and will be less so.
Dolton: yes, strict compliance would imply no structure could be built on that property.
Kopriva: that's five yeses for that one.
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.
Dolton: yes, they have a right to rebuild the existing footprint of the structure and they have a requirement to raise it the three feet to get it out of the flood plain and the high-water mark.
Prescott: yes, the variance will give substantial justice. The applicant has demonstrated compelling reasons for replacing the structure.
Jerman: yes. I'm in agreement with my committee members.
Cowan: yes, I'm in agreement.
Visger: yes. restores it to a habitable structure.
Kopriva: that's five yeses for that one.

E) that the variance will not cause adverse impacts on surrounding property, property values, or the use and enjoyment of property in the neighborhood.
Dolton: yes, the standard is met. If anything, it will improve property values and the neighborhood as the existing structure is in a state of extreme disrepair.
Visger: yes, for same reason as Dolton.
Cowan: yes, for the same reasons that Dolton has put forth.
Prescott: yes. condition met for the same reasons as my colleagues have said.
Jerman: yes, condition have been met. As the neighbor stated that this place needs repair. It's been that way for some time.
Kopriva: we've got five yeses on E.
F) 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.
Visger: yes, it does not create that situation.
Jerman: yes, I agree with Visger.
Prescott: yes, it's permitted to be used as a structure, residential structure, and it will continue to be so.
Cowan: yes, it will continue to be a residential structure.
Dolton: yes, no change in use.
Kopriva: we got five yeses on that. So out of the six criteria, all six criteria have been met by the majority of the board.
Dolton: one further question of the applicant. You're indicating that you need to raise the structure three additional feet. Is that accurate? Is that sufficient?
Campbell: yes. The code requirement is 1 foot 6 inches and we are taking into effect the wind and the wave action to take it up an additional 1 foot 6 inches as a prudent engineer.
So, the 3 foot the condition of and the original structure height goes up three feet. So, the peak of the roof will not be any higher than it will be three foot higher than it is right. A condition of that nature is workable.
Dolton: a condition of that nature is workable. I would entertain that someone make a motion with the following two conditions 1) that the foundational area and square footage of living space does not exceed 1,206 square ft and that the final structure is limited to 3 feet taller than the existing structure.
Visger: one more condition. That's considering the sensitivity of this in terms of size and so forth that upon completion of the foundation that there's some sort of survey verification that everything is compliant still at that point.
Dolton: any reaction to the board supported
Prescott: is that more of an enforcement thing?
Kopriva: I think it could be a if you like that and that could be a condition of approval for it. I don't know that the language and the zoning ordinance I think we could just in zoning but because this is so specific to that number and if there's concern I think it's within your purview and reasonable if that's something that you'd like to put on the record as a condition. Does that pose an additional limitation than the 1,206-foot foundational? No, because it's got setbacks.
Visger: the houses I've built before in other townships, we've had to provide surveys upon completion of foundation, and that's been very valuable for the township. The survey would be to verify the square footage but also the setbacks.
Campbell: we'd be happy to have the surveyor at the point of foundation completion certify that the setbacks are met in the elevation.

Visger: considering the sensitivity and the comments that were made by the neighbors, I think it's only prudent.
Campbell: is Simmer Land Surveying allowed to be the person that does the survey or do we need Gourdie-Fraser? I'm happy to do either way. I want to do it once.
Kopriva: I mean from my perspective if Simmers is willing to put their seal and sign on it and they're a licensed surveyor, I'm fine with that.
Dolton: we're talking three conditions. First condition, that the completed structure, foundational area, and square footage of living space does not exceed 1,206 ft. That the final structure is limited to an additional three feet taller than the existing structure. and that a survey at the point of the foundation will meet the submitted plans to the township.
Kopriva: I think three should be if I may improve your language, provide a certification from a surveyor when the foundation is complete for the square footage and location on the site to the zoning administrator.
Dolton: do we have with those conditions, a motion to approve the variance?
Cowan moved to approve Request 923 with an additional three conditions, that the completed structure, foundational area, and square footage of living space does not exceed 1,206 ft. That the final structure is limited to an additional three feet taller than the existing structure and a certification from a surveyor when the foundation is complete for the square footage and location on the site to the zoning administrator with a second by Prescott.
Dolton: could we have a roll call vote
Kopriva: Prescott-yes, Cowan-yes, Dolton-yes, Jerman, yes, Visger.
So, we had five yeses on that. Congratulations.

C. Public Hearing for Request No. 928 to install rip rap in the floodplain

Applicant: George Freeman, 2988 Ishpeming Trail, Traverse City, MI 49686
Property Owner: The Bluffs Association, Inc, 2888 Bluff Rd, Traverse City, MI 49686
Property Address: 2888 Bluff Rd, Traverse City, MI 49686
Parcel Code #28-11-009-023-00

Requesting a variance under Section 7.4 to add fill in the flood plain to repair the existing seawall.

Dolton: we will open a public hearing for business item number C. Request number 928 to install rip rap in the flood plain. We'll start with Kopriva giving us a quick overview. And I apologize for the late night.
Kopriva: you have this application and staff report in your packet. Briefly, just from my interaction and dealing with this application, the Bluffs Association filed a permit to put a new foundation under the existing deck on their clubhouse, which is located within the wide setback in the and the flood plain as you see in the survey. At the end of the foundation work, they determined that an additional rip rap was needed for the sea wall. The zoning ordinance as we've become more familiar with lately related to the flood plain because the elevation of the flood plain did change two or three years ago. In the flood plain you can't have any fill and that kind of goes to this rip rap and the sea wall. They're not able to add materials into the sea wall as it currently exists. We did discuss whether they could move materials within the flood plain. You could remove materials from the flood plain or you can adjust where they live, but you can't add to it. The applicant went back and talked about it with their engineer and then came forward with this proposal and they can go into more details about why they need to

and some of the implications, but, in essence, it is to add some material to the existing sea wall to help stabilize that bank to help protect the building that currently exists. The foundational work on the deck that they're doing is not included in the variance request. I believe that because they're not removing that, they're doing work foundational work underneath it. They're not expanding the use, they're dealing with the non-conforming, they're repairing it and they're not removing that structure so it doesn't require a variance from the ZBA. If anybody had that question related to it, if they wanted to tear that off and rebuild it, we'd be having a different discussion. But my understanding is it is more just foundational related to that structure and they can clarify that too. From that, but we did only advertise related to the flood plain for the additional material.
Dolton: question for you, Kopriva. I was a little surprised given the date of the original construction, which postdates our ordinance, which generally wouldn't allow such a structure. Was that approved as part of their SUP or how was that approved in the first place?
Kopriva: I don't know that. I didn't get a chance to pull their original SUP. They may have some history that would help us with that. From my perspective and the zoning office as we're kind of dealing with what exists there and however it got there, in the past, and moving forward. That is something if you have personal interest I could try to wrangle through some of the older SUP information, but the short answer is I don't know the details of exactly how that came to be.
Dolton: fair enough. We'll ask for the applicant to make their presentation.
George Freeman 2988 Ishpeming Trail, Traverse City, MI 49686
Freeman: I'm a property owner and member of the homeowner's association for Bluffs Association, Inc. I'm just going to summarize basically close to what Kopriva just said and we're open to any questions that if you're confused about. We own a beach house. We call it a beach house structure. It's on common property for the HOA and it was built in 1982. The foundation is failing. The foundation is eight concrete piers that are about three-foot feet in diameter, four in front, four in the back, and they support this up above the water level above the same the grade and it's failing. I put pictures in there for that and it showed that they're failing. We're just concerned that we have to get this done quick enough where we don't have a failure and we have a building that starts coming down. It's to ensure the integrity of the structure as well as that its use continues as it always has since 1982. It's part of the repair process the engineer has put in specifications requiring rip rap and he put that in there for purpose of protecting these new piers that are being put in place and so they do last their intended useful life. That rip rap is underneath the building and underneath the decking that's in front of the building on the water side and then goes out three and a half feet outside beyond the structure towards the water. There are two different types of rip rap. I put coloring on there. I can go into more detail if you want. Kopriva talked about a sea wall. It's not a sea wall. We don't have a sea wall. We're not filling anything and there is no present sea wall there. All we're doing is laying rip rap on top of the ground, which protects from erosion and wave action. There is no sea wall unless that you're speaking to the very back end of the structure that hasn't changed.
Dolton: fair enough to say the rip rap is to stabilize and protect the ground around the foundation.
Freeman: correct. But it's new. There is no rip rap down there now. We think that the rip rap will be an asset to Bluff Road as that it's a pretty steep bank there. The embankment runs all along in there. Any additional rip rap that keeps the wave action and high water held back a little bit that it's going to be helpful for the township and in general.
Prescott: have you done any evaluation on how the rip rap will potentially impact it could have especially because you own everything 300 feet basically north and what about to the south the neighboring beaches to the south 500 feet to the north. My understanding of sea walls and rip raps is

they're great for what you're trying to protect, but a lot of time they can have negative impacts on other people.
Freeman: sure. And I think that you're talking about jetties and sea walls and movement of sand and I'm not an expert so my opinion but this is rip rap laying on top of the sand. I don't think it's going to affect the movement of water up and down the beach way I don't think that's the same thing as when we had jetties put in back in 80s or 70s, no I'm sorry 2006, something like that and yes that with a jetty which has implications on sand movement.
Prescott: at least according to the Army Corps of Engineers. I'm not saying you don't need it to protect I understand why you're doing the rip rap, but I mean I just wonder so there has been no evaluation on whether it could have any kind of negative impact on your neighbors, not your bluff road ones. I mean not the bluff association shared beach
Dolton: that is owned by the Fisks, the property adjacent to you directly to the south.
Freeman: yes. We did think about it and our engineer did and we did not conclude that it would affect them. Maybe that requires some more digging. I won't go into our engineering as Parker who can't come tonight because he was sick. Put those in the specifications that after a full review and basically said that he wouldn't recommend the project without it. It just wouldn't be feasible.
Dolton: do you have an estimate or a number for the quantity of rip rap?
Freeman: it's 21 cubic feet on the EGLE permit which says we will place approximately 3 cubic yards of natural stone rip rap across 48 linear feet of shoreline. What that means three times. What that means is EGLE is only concerned about fill below the ordinary high-water line. That's a very small portion of drip right that's going down that they're involved with. That's three square. They said they estimated 3 cubic feet. I think that's excessive in their estimate. We have 6 cubic yards of natural stone. That's what goes at the front of the building. And underneath which is the angular heavy rip rap is 21 cubic yards. Did I say feet? I mean 21 cubic yards. That's the total. Six cubic yards of natural stone and 21 cubic yards heavy rip rap that which has a definition.
Cowan: the EGLE permit has it.
Prescott: it only deals with what's below.
Kopriva: it's at the bottom of his cover letter that looks like this. It talks about because then you're going to have 27.5.
Dolton: we're getting to one of the errors that I or one of the lessons I should say that the ZBA has learned is not putting sufficient conditions so that people don't frankly and I'm not saying you would but that people don't abuse the variance that's permitted. If we give a general variance to say you can install rip rap and don't put any boundaries on that we can't control whether you're putting 27 cubic feet or putting 100. That's 27.5 cubic yards Is that workable?
Freeman: yes.
Visger: Well, that does not seem like enough.
Dolton: we have a dissenting view here.
Visger: probably not enough. I'm trying to digest what they're doing here. How long is this deck at the shoreline?
Freeman: 48 ft. Doesn't seem like enough.
The board be comfortable with the number presented 27.5 or should we allow 30? Just throwing out options here folks, thoughts.
Visger: so your engineer arrived at the 27, right? Or the 21 plus the six21.3 plus 6.2.
Greg Troyer Deep Foundation Repair DFR 1807 Perry Loop Traverse City

Troyer: We'll be installing the rip rap. The cubic yardage of the 21 cubic yards that's under the deck. And that is a gray limestone. That's a crush limestone. That isn't going to be as sizable as what goes in the front. The EGLE permit is talking 18 to 24 in natural stone. Those are large rocks. So those are going to be what's in the front where the water that's providing the wave protection to the actual concrete structures. But underneath the deck that 21 yards is a smaller angular rock. So, I mean whenever you're figuring rip rap it is somewhat of a guesstimate. I would err on the size of giving us a little bit more. I would let's just say 35, not to exceed 35 yards.

Dolton: I would imagine you don't wish to install more rip rap than is necessary. It's an expensive proposition. We'll work with 35 cubic, that's total fill. And to be clear, the variance that we're looking at is to place fill in the flood plain. Is that correct?

Kopriva: I understand you're using rip rap like in my terms, it's you're putting some barrier between the water and the ground to protect the bank type of thing is where I'm using sea wall even though I know that it's not technically a sea wall. It's going to be driven in as a sea wall. that some people may think of. I apologize for that terminology I used.

Prescott: it's new, right? It is and what is in our shoreline regulations?

Dolton: no fill in the flood plain.

Prescott: that but there's nothing about rip rap?

Kopriva: no, it we do allow below the ordinary high-water mark. we allow for sea walls and rip rap. It doesn't conflict. It's just that now the flood plain is typically higher than the ordinary high- water mark and so the flood plain is the regulation is saying you can't do it where if you can put it under the high-water mark. In the flood plain is very specific about saying not allowed in the flood plain. And the fill is not allowed, specifically as well. So, I think that's one of those sections you'll see get cleared up here in the rewrite of the zoning ordinance. It's just that we're dealing with some I'm going to say older language and the change in the elevation to the flood plain with the new flood maps by FEMA, that came out. So, the ordinance hasn't quite caught up to all of that or kind of the process maybe to go through for it.

Dolton: other questions of the applicant?

Cowan: yes. why would you apply for this variance when you have not gotten permission from the Corp of Engineers yet to do this project?

Freeman: we've been trying to get through the permitting process and being naive in the situation. We were way off on how long it takes and we were trying to get this project done because we're concerned about the failure of this of these piers. We were trying to get this project done in the spring and we put it off to the fall. Now we're talking about this next spring and I'm all over the Corp of Engineers asking them to speed it up and it's a slow process with them and the best case would be for us to come with that permit in hand, but we were really concerned if we did there would be no time to go through this process and we would miss the construction period and we could have a failure.

Cowan: if we approve that it's not sufficient. I think that you have indicated in your permit application your variance application that you would not move forward until you get that permission from the corp. I was just wondering why, you didn't wait. So, you explained it. . .But it's not going to help you.

Dolton: any other questions of the applicant? Hearing none, persons wishing to speak in favor of the request at this time? Anyone wishing to speak against the request at this time?

Seeing none at this point then we'll close the public hearing and we'll turn to board deliberation and vote. This case we're just evaluating this based on section 5.7.3 basic conditions and we have only a single variance to consider which is adding fill to the flood plain and recommended condition that the fill does not exceed in total 35 cubic yards.

Prescott: shouldn't one of the conditions be approval from the Army Corps of Engineers?
Kopriva: yes. We'd require that prior to land use permit. and it'll be documented in the minutes as well. That this discussion happened.
Dolton: are we prepared then to move to basic conditions.
Kopriva: section 5.7.3
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.
Prescott: yes, condition is met the boat house and no sea wall and the foundation are the boat house is non-conforming. It requires variance and the practical difficulty does not is
not due to the applicant's hardship.
Dolton: yes, condition is met. the rip rap is a prudent course of action to ensure that the replaced foundational
component of the structure is secure.
Cowan: condition is met. I agree with both Prescott and Dolton.
Jerman: yes, condition is met. Current structure is having conditional issues. The installation of the rip rap is needed to maintain that site.
Visger: yes, condition is met. The foundation needs repair and the rip rap will help.
Kopriva: that's five yeses.
B) The need for the variance is not the result of actions of the property owner, self-created or previous property owners.
Visage: yes, the condition is met. Wave actions have caused the problem. Water level wave action.
Jerman: yes, condition is met. This is something that is just natural. We have water erosion that's occurring.
Dolton: yes, condition is met. Natural conditions cause the need for the rip rap
Prescott: yes,condition is met. Time erosion, high water damage, necessitates its repair.
Cowan: yes. condition is met because of what everyone else has said prior to me
Kopriva: there are five yeses for that.
C) The strict compliance with area setback, frontage, height, bulk, density, or other dimension requirement will unreasonably prevent the property owner from using the property for permitted use or will render conformity with those regulations unnecessarily burdensome. The fact that the property owner may incur additional costs and complying with this ordinance does not automatically make compliance unnecessarily burdensome.
Dolton: yes, condition is met. I think this stabilizes the property, which will extend the life of the property and if anything, this causes additional expense for the property owner to apply for the variance and receive the variance.
Cowan: yes, condition is met and I agree with Dolton that this is a seemingly easy solution to what is potentially a long-term problem that can never be solved.
Jerman: yes, condition is met and I agree with my colleagues
Visger: yes, the condition is met. Stabilization is needed.
Prescott: yes, condition is met. Strict compliance with the ordinance is not achievable.
Kopriva; that's five yeses.
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 would be more consistent with justice to other property owners.
Jerman: yes, condition is met. I see this as the property owner is not only stabilizing their area but potentially avoiding impact to their neighbors.
Cowan: yes, condition is met. This is a win-win for the entire neighborhood association, not just the applicant.
Dolton: yes. Condition is met for reasons already articulated.
Prescott: yes, condition is met for reasons already articulated.
Visger: yes. condition is met for prior reasons.
Kopriva: that's five yeses for that.
E) That the variance will not cause adverse impacts on surrounding property, property values, or the use and enjoyment in the neighborhood.
Cowan: yes. Conditions met as far as we know.
Dolton: yes, I think this will prevent actually destruction of property that would harm neighboring properties. Condition is met.
Prescott: yes, the condition is met. The variance, as far as we know, won't have adverse impacts on surrounding properties.
Visger: yes, condition is met. It'll help this property and likely the surrounding properties.
Jerman: yes, this condition is met as my colleagues have indicated.
Kopriva: there's five yeses then for E.
F) the variant 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.
Jerman: yes, condition is met. I don't see any other reasons for additional variances to be discussed for this property.
Dolton: yes, condition is met for reasons that Jerman mentioned.
Visger: yes, condition is met. There's no change of use.
Prescott: condition is met. use will be unchanged by the association.
Cowan: yes. Condition is met. No change of use.
Kopriva: there's five yeses. So, you have had yes for all six criteria.
Dolton: all criteria have been met. So, I would entertain a motion to allow fill in the flood plain not to exceed 35 cubic yards of stone and rip rap. Who wishes to make the motion?
Visger moved to allow fill in the flood plain not to exceed 35 cubic yards of stone and rip rap with a second by Cowan.
Kopriva: Roll call vote.
Visger- yes. Cowan- yes. Prescott-yes. Jerman- yes. Dolton-yes.
Congratulations.

9. Citizen Comments

Campbell 225 East 16th Street just here to make to say thank you. you guys are in a tough position. I came to the meeting on the first item on the agenda a couple weeks ago. You're in a no-win situation. We're in a divided country right now where everybody has an opinion and it's 50% this way and 50% this way. So, thank you. Keep it up. Let me know if you need a rah rah.

Thank you. Thank you for your comments. Thank you. And merry Christmas.

10. Board Comments

That was challenging. That was challenging.

Cowan: Well, my only comment relates to the Bluff Road ABC alternatives and that is we took a lot of heat from Jane Boursaw who is a property owner adjacent to that. I don't even know if you had or not. Basically, for doing our job that we were presented with a plan that none of us wanted to approve. I think that's obvious. None of us thought it was a good plan, but based upon current zoning ordinances, we had to. And I'm sorry that some of those objectors weren't here tonight because I would have said to them, if you want to see something changed, if you don't want to see this sort of abortion occur again, then we need to have a hillside building ordinance that regulates what you can and cannot do on a on a hillside. And guess what? That's not our job, right? We can only take that to the planning commission or they can take it to the planning commission. So that's all I have to say. I felt vilified when we weren't deserved to be.

Dolton: I appreciate those comments and they're similar to ones I've reiterated before, which is we don't have to like the zoning ordinance. That's not our job. Our job is to apply the variance requests against the ordinance as it's currently written to the best of our abilities. Thank you for your comments.

11. Adjournment Cowan moved to adjourn the meeting with a second by Visger.

Approved by Consensus

Meeting Adjourned at 9:54 p.m.