Peninsula Township

Zoning Board of Appeals

December 16, 2025

Packet Addition

Grobbel Environmental & Planning Associates
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December 13, 2025

Zoning Board of Appeals
John Dolton, Chair
Peninsula Township
13235 Center Rd.
Traverse City, MI 49686

RE: Professional Planner's Report - Dimensional & Use Variances Request, McFall Parcel, 12839 Bluff Rd., #28-11-134-003-03, Zoning Classification: Rural Hillside and Residential (R-1A), Peninsula Township, Grand Traverse County, Michigan.

Dear Peninsula Township Zoning Board of Appeals,

Summary of the Requested Variances:

Peninsula Township Zoning Ordinance Section 7.4.7(1) Flood Plain and Wetland Controls requires a 25 foot setback for any structure or impervious surface (including but not limited to parking lot, driveway, paths, etc.) and wetlands.[1] Section 7.4.7(A)(2) prohibits development or modification of any kind within a wetland or wetland setback. As part of plans to construct a single-family home on the subject parcel, Applicants have requested dimensional and use variances from the Peninsula Township Zoning Board of Appeals (ZBA). *Section 5.7.3 Variances of the Peninsula Township Zoning Ordinance authorizes the ZBA to consider dimensional variances, but it is not clear that the ZBA has authority to review and authorize use variances pursuant to this Section*. The Michigan Zoning Enabling Act strictly limits use variance authority to Township's with clear use variance authorization within their zoning ordinance, and/or have granted use variances prior to February 15, 2006. The Township ZBA's authority to grant a use variance to allow the direct placement of fill within wetlands or the 25 ft wetland setback, prohibited by Section 7.4.7 (A)(2), must be clarified.[2]

[1] Section 7.4.7 Flood Plain and Wetland Controls (Revised by Amendment 195), Peninsula Township Zoning Ordinance, effective June 5, 1972 as amended through march 12, 2024 (Amendment #204).

[2] Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended, Section 604(9)(b) limits use variance allowance to "Townships…that as of February 15, 2006 had an ordinance that uses the phrase "use variance" for "variances from users of land" to expressly authorize the granting of use variances by the ZBA," and/or"Townships…that granted a use variance before February 15, 2006" per Section 604(9)(c).

Wetlands and Unnamed Stream:

A wetland delineation report was completed by Gosling Czubak, Inc. on August 14, 2024. The Michigan Department of Environment, Great Lakes and Energy (EGLE), Water Resources Division approved a permit pursuant to Michigan's Wetland Protection Act: 303 and Part 301: Inland Lakes and Streams Act[3] to place a 34 foot long by 57 inch wide by 38 inch tall culvert within an unnamed stream and wetland corridor to access the proposed home, and to place 136 yards of proposed driveway and parking area fill within on-site wetlands.[4] *It is noted that the proposed storm water discharge/overflow to wetlands along Bluff Road (ultimately draining to East Grand Traverse Bay/Lake Michigan) is a wetland use as regulated by Part 303, and was not included in or approved within EGLE, WRD's Part 301/303 permit.*[5]

Importantly, site plans also include significant earthwork, i,e., excavation/slope cutting, immediately adjacent to wetlands west and southwest of the proposed parking area and south of the home/pool and patio areas.[6] *This proposed excavation/cut will effectively drain wetlands, which prohibited by Michigan's Part 303.*[7]

Also, on-site wetlands are within 1,000 feet of the the Great Lakes, i.e., East Grand Traverse Bay/Lake Michigan, therefore joint wetland permit approval is needed from EGLE and the U.S. Army Corps of Engineers for proposed wetland impact at this location. Based on information and belief, Applicants have not sought and/or have not obtained U.S. ACE approval for proposed (or completed) wetland impact. The request for dimensional variance is thereby premature, administratively incomplete and should not be acted upon by the ZBA as submitted.

Finally, it is unclear where the existing "temporary" driveway has been constructed within wetlands and/or the 25 ft wetland setback. This needs also to be clarified and reliably verified to ensure the completeness of the variance requests, compliance with Township zoning regulations, and state and federal wetland permit reviews and approvals.

Summary of Requested Dimensional and Use Variance(s):

Applicant Bay Area Contracting, representing landowners Roger and Kelly McFall, have requested dimensional and use variances from the Peninsula Township Zoning Board of Appeals (ZBA) "to construct an asphalt driveway in a wetland and the Township's 25 foot wetland setback."[8] Township Zoning Administrator Sara Kopriva has noted that the proposed parking/turn-around area south of the proposed attached garage would also encroach within the 25 ft wetland setback.

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[3] Parts 301 and 303 of Michigan's Natural Resources and Environmental Protection Act, P.A. 451 of 1994, as amended.

[4] Permit No. WRP043808, 28-12839 Bluff Rd., Traverse City, Issued January 9, 2025, Permittee Roger McFall, 5484 Pinnacle Court, Ann Arbor, MI 48108, Submission #HQ5-SXSX-g1NP9, Version 4.

[5] See Site Plan: McFall Residence, BAC Design, Gosling Czubak, Inc., Sheet S-1, dated August 5, 2024.

[6] *Ibid.*

[7] *See Michigan's Wetland Protection Act, Part 303 Section 30304(d).*

[8] Peninsula Township Zoning Board of Appeals Agenda, Regular Meeting, December 16, 2025 meeting packet, p. 9 - continuation of Public Hearing for Request 927 from October 8, 2025 ZBA Special Meeting and November 10, 2025 Special Meeting.

Variance Requirements:

Section 5.7.3 of the Peninsula Township Zoning Ordinance requires the Zoning Board of Appeals to find that ALL of the following conditions have been met to approve a variance.

(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.**

Feasible (i.e., technically achievable) and prudent (i.e., cost effective and natural resource protective) alternatives exist to residentially develop this parcel without impacts sensitive natural features, i.e., steep slopes, forest cover, wetlands, and an unnamed stream discharging to East Grand Traverse Bay/Lake Michigan. For example a lower, flatter upland area exists south of the proposed permanent driveway, and a relatively flat upland area exists at the location of the proposed septic drain fields that if developed would allow landowners to achieve their goals without impacting sensitive and regulated natural resources and water quality. The development plan as envisioned seeks to or has already clear forest cover from steep slopes, fill wetlands, and direct storm water overflow into wetlands and surface waters - none of which accommodate the landowners' intended use while conforming with Township zoning, and state and federal environmental regulations.

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

The site plan as proposed is entirely due to the actions of landowners' and/or their agents which have resulted in plans to construct in wetlands and to encroach into required wetland setbacks. Feasible and prudent alternatives exist to residentially develop this parcel without impact to wetlands or the need for the requested variances, see (a) above. *The variance requests thereby do not conform with standard (b) above, necessitating variance request denial.*

(c) **That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome. (Because a property owner may incur additional costs in complying with this ordinance does not automatically make compliance unnecessarily burdensome.)**

Feasible and prudent alternatives exist to residentially develop this parcel without impact to wetlands or the need for the requested variances, see (a) above. *The variance request thereby does not conform with standard (c), requiring variance denial.*

(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.**

Wetlands and waters of the State of Michigan are public trust natural resources "owned" by the residents of the State of Michigan, and EGLE and other agencies act a fiduciaries to protect the public's interest in these resources. Substantial injustice will occur to neighbors and public trust in natural resource protection if the wetland fill use variance or wetland setback variance are granted. *The variance request thereby does not conform with standard (d) above, requiring variance denial.*

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

The requested variances if allowed will result in unnecessary wetland destruction and impact to surface waters adversely impacting surrounding properties, and the use and enjoyment of the neighborhood and its environmental quality. Also see the reply to (d) above. *The variance request thereby does not conform with standard (e) above, requiring variance denial.*

(f) **That the variance shall not permit the establishment within a district of any use which is not permitted by right, or any use for which a conditional use or temporary use permit is required.**

The proposed residential development of this R-1A zoned parcel is a permitted use in this district. *The development as proposed complies with the above subsection (f) requirements.*

Site Development Alternatives:

Development alternatives at this parcel that should be considered by the ZBA include but are not limited to:

1. *Construct the new residence and associated structures entirely on uplands outside of wetlands and the 25 ft wetland setback nullifying the need for this request for wetland fill and wetland setback variances.* Applicant/landowners and their agents have not adequately considered alternative site plans avoiding forest clearing on steep slopes, driveway construction on slopes, wetland impact, etc. ,and does not represent the least impacting alternative accommodating residential site development.
2. *Construct a free-span bridge over the unnamed stream to access the proposed home site, eliminating stream and wetland impact at the proposed driveway crossing.* In order to preserve and protect water quality of the stream and protect its associated wetland corridor, the planned culvert and fill should be replaced with free span bridge, if this property is developed as proposed. A robust feasible and prudent alternatives analysis is required by Part 303, avoiding wetland impact whenever possible, and if wetland impact is unavoidable the selection of development alternatives that minimizing wetland impact is required by Part 303.

3. *Construct structures cantilevered and projecting over environmentally sensitive features.* In order to preserve and protect existing topography including steep slopes and wetlands existing at this parcel, all proposed development at this location should be constructed entirely on uplands - avoiding environmental impact and the need for Township variances.

Mitigating Factors/Additional ZBA Considerations:

Additional factors that should be utilized by Applicant/landowners in the selection of the preferred development alternatives include:

1. All storm water should be directed away from the the unnamed stream or the drainage way along Bluff Rd., and infiltrated on-site into groundwater.
2. Recognizing the inherent value in water quality, wetland protection and wildlife habitat, the on-site slopes, stream and wetlands should be preserved in their natural state, avoiding impact while still achieving the landowners' goals.
3. The proposed future single-family residence and associated structures under any development scenario should be maximally established within relatively flat uplands, avoiding impact to environmentally sensitive features at the parcel.

For the above stated reasons, the Peninsula Township Zoning Board of Appeals should deny these appeals.

If you have any questions regarding these public comments or this planner's report, please feel free to contact me at 231-499-7165 or grobbelenvironmental@gmail.com. Thank you.

Sincerely,
Grobbel Environmental & Planning Associates

Christopher P. Grobbel, Ph.D.
Sr. Planner/Wetland Professional

References

EGLE Permit No. WRP043808, 28-12839 Bluff Rd., Traverse City, Issued January 9, 2025, Permittee Roger McFall, 5484 Pinnacle Court, Ann Arbor, MI 48108, Submission #HQ5-SXSX-g1NP9, Version 4.

EGLE Wetland Permit Minor Revision Request Form, #HQC-73KV-YDRBJ, Version 1, dated April 29, 2025.

Peninsula Township Zoning Ordinance, effective June 5, 1972 as amended through March 12, 2024 (Amendment #204).

Site Plan: McFall Residence, BAC Design, Gosling Czubak, Inc., Sheet S-1, dated August 5, 2024.

Wetland Delineation Report, 12839 Bluff Road, Peninsula Township, Grand Traverse County, Michigan, August 14, 2024, GCES Project #240271.