

PENINSULA TOWNSHIP

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PENINSULA TOWNSHIP ZONING BOARD OF APPEALS MINUTES

December 19, 2023
7:00 p.m.

1. **Call to Order** by Dolton at 7:00 p.m.
2. **Pledge**
3. **Roll Call** Dolton, Serocki, Dloski, Wahl, Cram, Director of Planning and Zoning, Witte, township attorney
4. **Approval of Agenda** Dolton moved to have Business Item 2 go first. Dloski moved to approve the amended agenda with a second by Dunn. **Approved by consensus**
5. **Conflict of Interest** None
6. **Brief Citizen Comments – (for items not on the Agenda)** None

Dolton: the Director of Planning and Zoning has obtained some of the information required for a staff analysis, but not quite all. The recommendation by legal counsel and the staff is to table Request 912 to a date certain of January 16, 2024. Cram is confident there will be a comprehensive finding of facts for the ZBA to make a good decision.

Dloski: has the applicant been informed of this change?

Cram: yes, while they would rather have this discussed tonight, the recommendation by legal and staff is to make a motion to table this case until a date certain of January 16, 2024.

Dunn made a motion to table Request 912 until January 16, 2024 with a second by Dloski.

Approved by consensus

Greg Luyt, counsel for the applicant: in response to your question, yes, we did object to this being tabled. The applicant would like to move this ahead more quickly. There is an application in the materials provided to the board. It has not been our failure to provide information. We submitted our application on October 27, 2023. The first request we received for additional information was not until December 5, 2023. The deadline to provide this information was given was December 11, 2023. We provided all of the substantial information on December 8, 2023. Several items requested we did not have or did not believe were relevant to the consideration of the application. Based on the information provided, we think a determination could be made tonight.

Dloski: do you want to proceed tonight?

Peninsula Township
Zoning Board of Appeals
December 19, 2023 7:00 p.m.
Transcribed by Lola Jackson

Dolton: we cannot proceed tonight as we agreed to table the discussion, but secondarily the board does not see any information you submit until it is submitted to us in the packet. As the recommendation was to table this item, we did not receive any of the information.

Luyt: we are under a time constraint. We have a contractor lined up to perform the work and would like to move forward as quickly as possible. So we can be assured of a January 16, 2024 hearing?

Dolton: yes.

7. **Business:**

1. Public Hearing for Request No. 911, Zoning = R-1B – Coastal Zone (Tabled from November 21, 2023, meeting)

Applicant/Owner: Matthew B Myers & Keegan L Myers, 625 & 701 Tucker Point, Traverse City, MI 49686

Property Address: 707 Tucker Point, Traverse City, MI 49686

1. Requesting to replace an existing two (2) story non-conforming structure per Section 7.5.6.
2. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a new garage and dwelling .5-feet from the front property line, where 30-feet is required.
3. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a new garage and dwelling, 12.6-feet from the rear property line, where 30-feet is required.
4. Requesting a variance from Section 6.8 of the Zoning Ordinance to exceed the maximum lot coverage of 15% up to 18%.

Parcel Code # 28-11-565-925-55

Cram: this property is in the Neahtawanta subdivision, which was platted in 1890 prior to the adoption of the Peninsula Township Zoning Ordinance, which was adopted in 1972.

Dolton: Section 7.5.6 has some additional requirements we need to discuss as well.

Keegan Meyers: we are looking to move from not being within the property lines to within the property lines and build a new structure. The existing structure is at the end of use and rather than try to rehab the old structure, we would like to start from scratch. This moves the new structure within the property lines. There is a right-of-way through the property, which has never been used. This right-of-way is on adjacent land, where my mother currently lives, so we see no need to make any changes there. The new structure is like what is there now, with a garage underneath and a living area above. If you have any questions, I can answer them.

Dloski: if you vacated the right-of-way, would you need a variance?

Cram: they would need a variance for the rear setback and the lot coverage.

Dolton: is there any scenario where the right-of-way would need to be utilized?

Cram: within your packets is an aerial view of this area. Everything is owned by the Neahtawanta association, except these 2 parcels. If the owner of the other lot ever wanted to develop this land, they have access from 2 other locations.

Dloski: if we grant this variance, does this take the buildings outside of this right-of-way? Would we be improving this property?

Cram: yes.

Peninsula Township
Zoning Board of Appeals
December 19, 2023 7:00 p.m.
Transcribed by Lola Jackson

Serocki: if the lots are combined, then they will not have an overage on the lot coverage.

Cram: the lots are so small that even if they are combined, they do not meet the minimum lot size and they still have an issue with the lot coverage.

Wahl: so there really is no suitable spot on this lot even if the lots were combined. They need a variance to do what they want to do.

Cram: correct. These 2 lots have not been combined and only have 1 parcel number.

Dolton: to be clear, variance request number 4, which is the lot coverage requires the combining of their 2 lots. Do the other variances require combination of the lots?

Cram: no. Variance requests 1,2, and 3 do not.

Dolton: if there is public comment, it would be expedient to discuss the entire site plan rather than each individual variance. If there is a desire to do each variance, we will.

Dloski: in looking at the proposed elevations of the new home, I cannot read them as the type is too small.

Cram: the length is 44 feet, and they are proposing 48 feet. The width is 26 feet and they are proposing 30 feet. The proposal is slightly larger than what is in your packet, but less than what exists there today.

Dloski: and would you permit this?

Cram: yes, if a plan looks like this, meets the building height, and the footprint matches the site plan in your packet, then yes, I would be able to issue a land use permit provided the variances are granted.

Dloski: what are the numbers for the new footprint?

Cram: currently the footprint is 1,820 square feet and the proposed footprint is 1,650 square feet.

Wahl: does this include the overhangs?

Cram: yes.

Dolton: is there anyone here who wishes to speak for this proposal? Hearing and seeing no one, is there anyone wanting to speak against this proposal? As there are none, I will now close the public hearing portion of the meeting and bring the request back to the board. Variance 7.5.6 comes with 5 additional conditions. I would like a legal opinion; do we need to go through each of the 5 conditions or can we have a general discussion?

Witte: it would be fine if you had a general discussion on these additional points.

Dolton: Section 7.5.6 concerns the moving or replacing of a non-conforming structure. Item 1 requires "the moved or replaced structure must be less non-conforming than the previous structure". Cram's analysis shows they are moving the structure outside of the road right-of-way and shrinking the square footage from the current, existing structure.

Dloski: the applicant is very constricted here by size and a variance here is appropriate. The other item is it takes the property out of the road right-of-way, which is very important.

Wahl, Dloski, Serocki, Dolton, Dunn verbally approve this condition has been met.

Dolton: Item 2 requires "there is increased safety to the residents of the structure and to the traveling public on the road providing access to the parcel". I am not sure this is even applicable in this case.

Wahl, Dloski, Serocki, Dolton, Dunn verbally approve this condition has been met.

Dolton: Item 3 requires "safety and substantial justice is achieved".

Peninsula Township
Zoning Board of Appeals
December 19, 2023 7:00 p.m.
Transcribed by Lola Jackson

Dloski: safety is a factor by moving the home or structure out of the road right-of-way. There is another property to the south that does have access, so we are not impeding their access.

Dolton: item 4 is not relevant because this talks about setbacks to the ordinary high-water mark. As special conditions for 7.5.6 have been met, we now need to go through the 6 Basic Conditions.

1. Requesting to replace an existing two (2) story non-conforming structure per Section 7.5.6.

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

Yes-Dolton: it is specific to whether it is due to the applicant's personal or economic hardship, which it is not. I think they need this variance due to the structure of the Neahtawanta platting back in 1890. Most every property there is non-conforming.

Yes-Wahl: if we do not look at the Neahtawanta area in a special way, no one would ever be able to do any expansion. Considering the existing structure is encroaching over property lines, moving it makes the property substantially better and more conforming. This is a unique circumstance due to narrowness and even with combining the 2 properties still results in an oddly shaped piece of property.

Yes-Serocki: the condition has been met.

Yes-Dunn: condition has been met

Yes-Dloski: every property in the Neahtawanta area shares the same issue of being non-conforming. We need to define this as a Neahtawanta specific problem, or suddenly it is going to come down on West and East Bay and everywhere else.

Dolton: when we give our vote of yes or no, we need to state our reasoning.

Witte: given there are 3 additional variance requests after this one, if you want to incorporate by reference your reasoning from one variance to the next, that would add efficiency if we are not interjecting new thoughts.

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

Yes-Dolton: this is not a result of actions of the property owner or previous property owners.

Yes-Wahl: the condition has been met for reasons already stated.

Yes-Serocki: I agree with Dolton.

Yes-Dunn: the condition has been met.

Yes-Dloski: this is not a self-created problem and apparently comes from the platting of the land back in 1890.

(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.)

Yes-Dolton: they are lessening the non-conformity of the property. They are currently not in compliance, and they cannot meet the requirements of the zoning ordinance as it now stands. They are lessening the non-conformity.

Yes-Wahl: I agree with the staff comment that there is no buildable area on the parcel and what Dolton stated.

Yes-Serocki: I agree with the staff comments.

Yes-Dunn: I agree with the staff comments and what Dolton stated.

Yes-Dloski: they are taking part of this property out of the road right-of-way. Looking at the way the structure now appears, replacing the structure will certainly be a benefit to the township.

(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.

Yes-Dolton: I do not see how a lesser variance would be more consistent with justice to other property owners.

Yes-Wahl: I agree based on staff comments and the previous discussions.

Yes-Serocki: agree with Wahl comments.

Yes-Dunn: I agree based on prior discussions and the staff comments.

Yes-Dloski: I do not see how a lesser variance would even work. I think this is the only suggestion or fix to this property.

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

Yes-Dolton: this improves the general site plan compared to what now exists there.

Yes-Wahl: my understanding is the family owns all of the surrounding property and it sounds like the property behind there is part of the conservancy. There is no adverse impact that I can see.

Yes-Serocki: the property would be less non-conforming, and the house would be within the boundaries.

Yes-Dunn: for the reasons already stated.

Yes-Dloski: for the same reasons stated by Dolton and Wahl.

(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.

Yes-Dolton: there is no change in use by right.

Peninsula Township
Zoning Board of Appeals
December 19, 2023 7:00 p.m.
Transcribed by Lola Jackson

Yes-Wahl: condition has been met.

Yes-Serocki: I agree with the staff comments.

Yes-Dunn: condition has been met by what has already been stated.

Yes-Dloski: there is no change in right.

Cram: there was a unanimous yes vote on the special conditions for moving or replacing a non-conforming structure and the additional 6 Basic Conditions.

Dloski moved Variance Request Number 1 be approved with a second by Serocki.

Serocki: Jenn (Cram) when would we mention the draft condition of approval? Do they get mentioned at the end when we vote?

Cram: normally you would include this in the motion that you move to approve this with the recommended conditions as noted in the staff report.

Serocki: okay.

Cram: given you are receiving more detailed staff reports on findings, perhaps I could work with legal counsel to come up with a streamlined process, but for right now we need to do it for each one.

Dloski amended his motion to approve Request Number 1 with the conditions staff noted in the staff report with a second by Dunn.

Roll call vote Yes: Dolton, Wahl, Dunn, Dloski, Serocki

2. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a new garage and dwelling 0.5-feet from the front property line, where 30-feet is required.

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

Yes-Dolton: for reasons already discussed.

Yes-Serocki: for reasons previously stated.

Yes-Wahl: for reasons previously stated.

Yes-Dunn

Yes-Dloski: the way the property is configured right now, it is basically impossible to construct that garage and dwelling and have it conform. It is just not going to work because of the 1890 plat.

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

Yes-Dolton: for prior reasons stated.

Yes-Serocki: for reasons stated.

Peninsula Township
Zoning Board of Appeals
December 19, 2023 7:00 p.m.
Transcribed by Lola Jackson
Yes-Wahl: for reasons stated.
Yes-Dunn: for reasons stated
Yes-Dloski: for reasons stated.

Witte: if the ZBA's reasoning is going to be essentially identical to the last 3 variance requests, I do not think it would be inappropriate to consider them together. If we are just repeating the same stuff for all of the standards, I think we can consider them together and then make a decision on them unless there is anyone that anticipates their reasoning being different. There is not going to be any benefit to the record if we are just repeating the same comments over and over.

Dolton: we will finish this one and then combine requests 3 and 4.

(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.)

Yes-Dolton: for reasons stated.
Yes-Serocki: for reasons stated.
Yes-Wahl: for reasons stated.
Yes-Dunn: for the same reasons.
Yes-Dloski: for reasons stated.

(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.

Yes-Dolton: for prior reasons stated.
Yes-Serocki: for reasons stated.
Yes-Wahl: for reasons stated.
Yes-Dunn: for the same reasons.
Yes-Dloski: for reasons stated.

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

Yes-Dolton
Yes-Serocki
Yes-Wahl
Yes-Dunn
Yes-Dloski

(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.

Peninsula Township
Zoning Board of Appeals
December 19, 2023 7:00 p.m.
Transcribed by Lola Jackson

Yes-Dolton

Yes-Serocki

Yes-Wahl

Yes-Dunn

Yes-Dloski: it is residential, and it stays residential.

Cram: in summary, the board had a unanimous yes vote indicating all standards had been met with regard to variance request number 2, which would allow the new garage and dwelling to be constructed 0.5 feet from the property line where 30 feet is required.

Dolton: I would entertain a motion that variance request number 2 be approved subject to the conditions in the staff report.

Wahl moves Variance Request Number 2 be approved subject to the conditions in the staff report with a second by Dunn.

Roll call vote Yes: Dolton, Wahl, Dunn, Dloski, Serocki

Dloski made a motion to combine variance requests 3 and 4 with a second by Dunn.

Wahl: can we combine one request that is about setbacks with the other request is about lot coverage?

Witte: yes.

Dolton: just to be clear. We are voting to combine request 3, which is a variance from Section 6.8 of the Zoning Ordinance to construct a new garage and dwelling, 12.6-feet from the rear property line, where 30-feet is required with an analysis of request 4 for a variance from Section 6.8 of the Zoning Ordinance to exceed the maximum lot coverage of 15% up to 18%, keeping in mind that requires combining lots 9 and 10

Roll call vote Yes: Dolton, Wahl, Dunn, Dloski, Serocki

Dolton: any discussion on either of these?

Dloski: on number 4, why are they increasing lot coverage? Do they just want to build a bigger house?

Cram: the existing structure exceeds the allowed lot coverage. They are proposing to reduce the footprint and better meet the setbacks by moving it onto the property, but they still exceed the allowed lot coverage of 15% for the R1B zone district.

Dloski: do they exceed it by 3%?

Cram: yes.

Dloski: so why don't they just reduce it by 3% and then they would not need a variance?

Wahl: there is a shed and a septic to the east of the property, and it is a very small lot.

Dloski: it is not what they want to build; it is what is buildable under the ordinance given our standards.

Cram: they are reducing the lot coverage because they are reducing the footprint.

Dloski: the volume is increasing but not the footprint.

Wahl: the footprint is decreasing.

Peninsula Township
Zoning Board of Appeals
December 19, 2023 7:00 p.m.
Transcribed by Lola Jackson

Cram: as the property exists right now, the existing structure now exceeds the 15% allowable lot coverage.

Dloski: that clears this up.

Dolton: we are now going to cover both requests 3 and 4 with this analysis.

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

Yes-Dolton

Yes-Serocki

Yes-Wahl

Yes-Dunn: referring to staff notes.

Yes-Dloski: especially on the rear yard setback. The line is so shallow, it is impossible to build on without a variance.

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

Yes-Wahl: for reasons already stated.

Yes-Serocki

Yes-Dloski: for reasons already stated.

Yes-Dunn

Yes-Dolton

(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.)

Yes-Wahl: for reasons already stated.

Yes-Serocki

Yes-Dloski

Yes-Dunn

Yes-Dolton

(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.

Yes-Wahl

Yes-Serocki

Peninsula Township
Zoning Board of Appeals
December 19, 2023 7:00 p.m.
Transcribed by Lola Jackson
Yes-Dloski
Yes-Dunn
Yes-Dolton

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

Yes-Wahl
Yes-Serocki
Yes-Dloski
Yes-Dunn
Yes-Dolton

(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.

Yes-Wahl
Yes-Serocki
Yes-Dloski
Yes-Dunn
Yes-Dolton

Cram: for variance requests 3 and 4 the ZBA voted yes unanimously for all conditions.

Wahl moved to approve Variance Request Numbers 3 and 4, subject to the conditions in the staff report with a second by Dloski.

Roll call vote Yes: Dolton, Wahl, Dunn, Dloski, Serocki

Dolton: all 4 variance requests have been approved for case 911.

Business:

2. Public Hearing for Request No. 912, Zoning = A-1 – Agricultural (Tabled to January 16, 2024)

Applicant/Owner: Luke C Miller Trust, 2465 Carroll Road, Traverse City, MI 49686

Property Address: 11586 Center Road, Traverse City, MI 49686

1. Requesting an appeal to the zoning administrator's determination that concrete crushing is a heavy industrial use or activity and not allowed within the A-1 Agricultural District.

Parcel Code # 28-11-004-008-00

8. Approval of Minutes from the November 21, 2023, Meeting

Dunn moved to approve the minutes with a second by Serocki.

Approved by consensus

9. Citizen Comments None

10. Board Comments

Peninsula Township
Zoning Board of Appeals
December 19, 2023 7:00 p.m.
Transcribed by Lola Jackson

Wahl: it is important we state for purposes of the record when we do have property owners from Neahtawanta. We run into issues where we have structures encroaching on other properties. The properties are almost always non-conforming, and we often need to look at those from a different perspective.

Dloski: I am encouraging Cram and the township attorney to work to streamline this procedure. The term practical difficulty is defined in our zoning ordinance, but we may add some additional terms to it. I would like to make sure that is consistent.

11. Adjournment Dloski made a motion to adjourn the meeting with a second by Serocki.

Approved by consensus

Meeting adjourned at 8:11 p.m.