

PACKET ADDITIONS

Correspondence

CASE NO. 892

ALWARD FISHER RICE
ROWE & GRAF

ATTORNEYS AT LAW

202 E. STATE STREET, SUITE 100
TRAVERSE CITY, MI 49684
Phone (231) 346-5400
Facsimile (231) 941-9679

WWW.NMICH.LAW.COM

E-mail: drowe@nmichlaw.com
Direct: (231) 346-5407

April 15, 2021

Peninsula Township
Zoning Board of Appeals
13235 Center Road
Traverse City, Michigan 49686

RE: OBJECTION TO VARIANCE REQUEST
HELTON/10602 BLUFF ROAD

Dear Zoning Board of Appeals ("ZBA"):

Please be advised that our firm represents the legal interests of John and Jeanne Snow (the "Snows") and Tony Glinke ("Glinke"), the closest adjoining property owners to 10602 Bluff Road (the "Parcel") on which the three-story lakehouse (the "New Lakehouse") is being proposed by Justan Helton ("Applicant"). The Snows and Glinke have asked me to inform the ZBA as to the illegality of this proposal (the "Proposal") and any approval thereof.

INTRODUCTION

Let us cut through the nonsense, the Applicant is not genuinely concerned with the "structural integrity" of his existing single-story cottage (the "Existing Cottage"); rather, he is concerned with exploiting its protection as a "non-conforming structure" for the purpose of completely replacing it with a three-story house that is triple the size of what is currently in place. In addition to running contrary to general principles and goals of zoning, the Applicant's Proposal (and the true purpose behind it) fails to satisfy the prerequisites set forth in the Peninsula Township Zoning Ordinance ("the Ordinance") for additions to, and reconstruction of, non-conforming structures, nor does it meet all of the very strict standards that must be satisfied to obtain the variances he is requesting. Specifically, the Applicant's requests fail as a matter of law for the following reasons:

- (1) The Proposal Applicant has submitted also finds little support from Section 7.5.6 as: (a) the increase from a small single-story (level to the road) cottage, to a three-story Lakehouse would *substantially increase the intensity of the residential use on the legally non-conforming lot*, (b) the 3x size and height of the New Lakehouse *per se* increases the non-conformity of the Parcel; (c) the increased square footage will undoubtedly lead to an increase in traffic going to and from

the Parcel to Bluff Road, and an increase in cars parked on the side of Bluff Road; and (d) the construction of a three-story house in place of a small single-story cottage has obviously detrimental effects to adjacent property owners (including our clients);

- (2) The Applicant cannot rely on Section 7.5.3 (Reconstruction of Damaged Non-Conforming Structure) because he admittedly is not "*constructing, repairing, or restoring*" the existing non-conforming structure (the Existing Cottage), but he is instead demolishing and "*replacing*" same with an entirely new non-conforming structure that is three times the square footage and height;
- (3) Even *arguendo*, if Section 7.5.3 applied and permitted such a "*replacement*" of non-conforming structures, the Applicant (other than paying lip service to foundational/structural concerns) has provided no actual evidence (i.e. engineering reports) to suggest that the Existing Cottage's foundation/structure has been "*damaged*" by the high water to an extent to make such a drastic action necessary; and
- (4) In addition to his inability to rely on the applicable non-conformity provisions, the Applicant's Proposal also cannot meet all of the basic standards/requirements set-forth in Section 5.7.3 necessary for his requested "variances."

It is for these purely legal reasons that the Applicant's request must (as a matter of law) be denied.

LEGAL ANALYSIS

Before diving into a narrow review of the specific requirements/standards associated with this Proposal, the ZBA needs to keep in mind that the general policy of the law favors the elimination of non-conforming uses, and thus it should look with disfavor upon any activities which would expand a non-conformity. "*The elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use.*" See MCL 125.3208. For that purpose, the Michigan Zoning Enabling Act (the "Act") and the Ordinance were, or at least were intended to be, a mechanism of the law for which non-conformities would eventually be brought into compliance through attrition. The Applicant's attempt to replace a single-story non-conforming cottage, with a brand new three-story non-conforming house does not seem to jive with these general principles, let alone the specific requirements set-forth below.

I. THE APPLICANT FAILS TO MEET THE REQUIREMENTS FOR MOVING AND REPLACING A NON-CONFORMING STRUCTURE PURSUANT TO SECTION 7.5.6.

The Proposal admittedly seeks to demolish the existing non-conforming structure, and replace it with the construction of an entirely new non-conforming structure in a different location on the

Parcel. In order to have any shot of accomplishing this, the Applicant has to show that he qualifies for this extraordinary zoning relief pursuant to Section 7.5.6 of the Ordinance. As the subsequent sections will illustrate, the Proposal does NOT qualify.

Section 7.5.6 provides in pertinent part:

“Moving or Replacing Non-Conforming Structure: The Township Zoning Board of Appeals may grant a variance for moving or replacing a residential structure on a legal non-conforming lot so *that the continued intensity of residential use of the lot is substantially the same as in the pre-existing structure*, provided *all* of the following are met:

- (1) The moved or replaced structure is *less non-conforming than the previous structure*;
- (2) There is *increased safety to the residents of the structure and to the traveling public on the road providing access to the parcel*;
- (3) Safety and *substantial justice is achieved*;
- (4) If the variance allows the structure to encroach into the setback from the Ordinary High Water Line, conditions of approval shall include: (a) provisions for stabilization of the shoreline so that the structure is not likely to be damaged by high water or wave action; (b) there is *no additional detriment to adjacent properties...*;
- (5) In addition to (1) through (4) above, the subject parcel shall also *meet all of the basic and special conditions as provided for all variances in Section 5.7.3*.

(Emphasis supplied.)

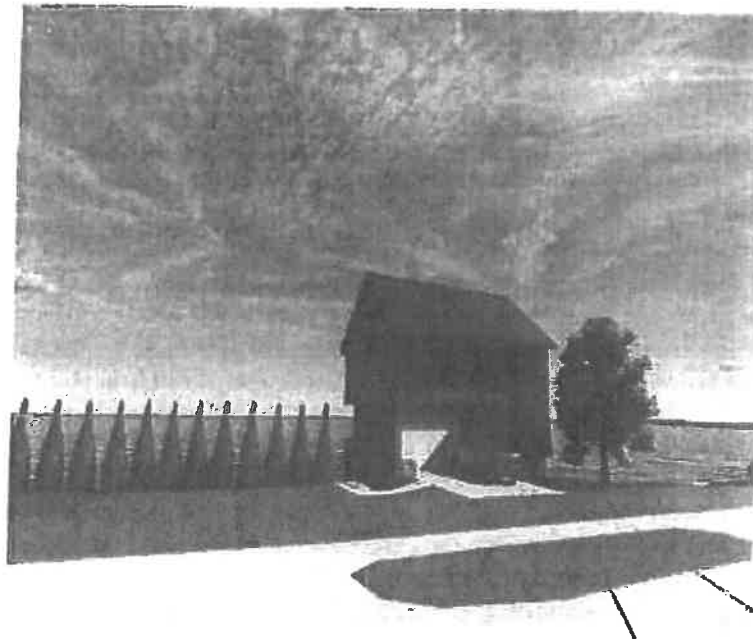
- a. The increase from a small single-story (level to the road) cottage, to a three-story Lakehouse would “substantially increase the intensity of the residential use” and non-conformity of the use of the lot.

As quoted above, in order to make an approval under Section 7.5.6, the ZBA must first make a determination “*that the continued intensity of residential use of the lot is substantially the same as in the pre-existing structure.*” A picture is worth a thousand words, so in determining if the “*residential use*” will be “*substantially the same intensity*” the ZBA simply needs to view the following “before and after” photo and artist’s rendering:

BEFORE



AFTER



The ZBA will note that the Existing Cottage is almost level with Bluff Road and is a fraction (1/3) of the size of the New Lakehouse, which looks like a skyscraper in comparison to the Existing Cottage. If it is not apparent from the photograph above, the Existing Cottage is a 1-story, 2-bed, 1-bath 900 square foot cottage. The New Lakehouse is a 3-story, with the potential to be (when the first level is inevitably finished) a 4+ bed, 3+ bath, 3,000+ square foot house. If multiplying the height and square footage of your structure by three is not a "substantial" change in use, then this requirement is superfluous. In addition to the New Lakehouse being "substantially different" in use to the Existing Cottage under the "eye test," a testing by Michigan courts would also find (as a matter of law) that this is an unjustified expansion of a non-conforming structure.

Michigan law generally prohibits the extension or enlargement of non-conformities, and the courts have concluded that zoning regulations should be strictly construed with respect to expansion. Similarly, the law emphasizes that the continuation of a non-conforming use must be substantially of the same size and the same essential nature as the use existing at the time of passage of a valid zoning ordinance. As a result, a non-conforming use will be closely examined to ensure that it is continued in a consistent manner and form, without expansion or increase in the non-conformity.

An example of just how strict Michigan courts are in restricting expansion of non-conformities can be found in *Highb v. Cascade Hills Country Club*, 173 Mich App 622 (1988); 434 Mich 556 (1990). In *Highb*, a country club pursued what it believed to be a legitimate expansion. It built a maintenance shed for golf carts pursuant to a township ordinance which allowed an expansion of an existing building devoted to a non-conforming use. The township had determined that the new building was a lawful extension of an existing non-conforming use. The Kent County Circuit Court agreed with this decision. The Michigan Court of Appeals reversed the trial court's holding and held that the erection of a new building was not a permitted enlargement or extension of a non-conforming use, but rather the new building was a completely separate and distinct structure serving a whole new use. This case illustrates how strictly the law regarding non-conforming uses may be construed.

Similar to the facts of *Highb*, the Applicant is proposing to erect an entirely new structure that is larger in size than the existing non-conforming structure (the New Lakehouse is proportionately much larger in size than the denied structure in *Highb* (200% larger versus less than 50%). The Applicant (just like in *Highb*) is also arguing that the "use" is not changing because it will remain a residence. All of these arguments were raised in *Highb*, yet the Michigan Court of Appeals still overturned the township's and the local circuit court's approval of the expansion. Simply put, if a 50% increase in square footage was prohibited, then a 200% increase must also be.

In addition to, and a direct result of, the massive increase in square footage comes the substantial change in actual "use" of the residence, meaning an obvious increase in the number of people and traffic using the New Lakehouse, as compared to the Existing Cottage. The substantial increase in size will accommodate a larger number of people and cars which will be a stark change from the traditional traffic and use of the Existing Cottage. Taken altogether, the Applicant's Proposal is (objectively) a "substantial" increase in the intensity of the residential use, and for that reason alone the Proposal must be denied.

b. The Proposed Structure will be a detriment to adjacent properties and will surely decrease safety to the residents of the structure and to the traveling public on Bluff Road providing access to the Parcel.

As eluded to in the previous section, the Proposal threatens serious safety concerns to not only the occupants of the New Lakehouse, but to adjoining owners and traffic on Bluff Road. The Proposal has the New Lakehouse adding a level (which appears to be) closer to Bluff Road. Allowing such a large structure so close and level to a busy road poses obvious risks especially in the wintertime. The Applicant attempts to argue that by providing a garage he will be eliminating parking near the road. This might hold some truth if he was planning to build a new structure of similar size and capacity, but that is not what he is proposing. A structure of three times the size and capacity of the Existing Cottage will inevitably lead to more occupants and thus more vehicles entering/exiting and parking on or near the Parcel. This will especially be true if multiple (non-resident) families/groups begin occupying the larger structure. As a result, there will surely be more cars lining Bluff Road with the New Lakehouse, than what there was with the Existing Cottage (garage or no garage).

In addition to the vehicle concerns, there ought to be significant concerns about families occupying the New Lakehouse in light of the fact that it will be in such close proximity to Bluff Road. Set-backs are in place largely for the protection of the public, and without adequate room, and given the level nature of the new structure to Bluff Road, there is a very real concern with children running toward and being in Bluff Road before preventative action can be taken.

The next safety concern is the substantial increase in the "impervious surfaces." The Existing Cottage had almost no impervious surfaces (aside from the structure itself). This allowed for water to flow naturally into the ground and/or toward Grand Traverse Bay. As is apparent from the models presented by the Applicant, the Proposal appears to make almost the entire Parcel one large impervious surface. In other words, the Proposal offers no surface for rainwater or snow melt to absorb. This will surely result in drainage and flooding on Bluff Road and/or onto neighboring properties.

Finally, the height and size of the New Lakehouse poses a detriment to surrounding properties. Until now, neighboring properties have had a largely unobstructed view to Grand Traverse Bay, and (more importantly) have not had to worry about substantial shadows from the Parcel affecting the enjoyment and value of their properties. The Snows have lake access (15 foot of lake frontage) immediately next to the Parcel. The sheer size/height of the New Lakehouse will look like a mini-skyscraper in the front yards of the adjacent properties, will block previously unobstructed sight lines, and will blanket our clients' beach/lakefront area with large shadows. These circumstances will be a detriment to use, enjoyment and property values of the surrounding properties.

c. Substantial Justice is not achieved with the Proposal.

The Applicant implies that it would be unjust for the ZBA to not allow him to replace his small Existing Cottage with the three times larger New Lakehouse. This is an absurd position. When the Applicant purchased the Parcel, he purchased (and likely paid a reduced price for) a non-

conforming lot with a small non-conforming cottage on it. The Applicant knew, or should have known, the limitations placed on that Parcel pursuant to its non-conforming status. If the Existing Cottage is in need of repair, or even reconstruction, the Applicant should be allowed to improve those conditions. However, the Applicant is not somehow suffering an injustice if he cannot legally build a 3,000+ square foot house to replace his small cottage. The Applicant has a legal right to continue to use the non-conforming property in a manner substantially similar to what was occurring prior to the passage of the Ordinance. The Proposal is not substantially similar, and to find otherwise would be to render the applicable restrictions in the Ordinance essentially meaningless. That would be the real injustice here.

II. A PLAIN READING OF SECTION 7.5.3 (RECONSTRUCTION OF DAMAGED NON-CONFORMING STRUCTURE) ILLUSTRATES THAT IT IS INAPPLICABLE TO THE APPLICANT'S PROPOSAL AS HE IS NOT "RECONSTRUCTING, REPAIRING, OR RESTORING" THE EXISTING COTTAGE.

In addition to Section 7.5.6, the Applicant also seeks approval pursuant to Section 7.5.3, which concerns the reconstruction of damaged non-conforming structures. On its face, Section 7.5.3 is entirely inapplicable to the current circumstances. The rules of statutory interpretation apply to zoning ordinances. *Twp of Yankee Springs v Fox*, 264 Mich App 604, 606; 692 NW2d 728 (2004). The Legislature is presumed to have intended the meaning it plainly expressed, and clear statutory language must be enforced as written. *Fluor Enterprises, Inc v Dep't of Treasury*, 477 Mich 170, 174; 730 NW2d 722 (2007).

Here, Section 7.5.3 provides in pertinent part:

"Reconstruction of Damaged Non-Conforming Structure: Nothing in this Ordinance shall prevent the *reconstruction, repair, or restoration* and the continued use of any non-conforming building or structure..."

(Emphasis supplied.)

Interpreting the operative words of "*reconstruction, repair, and restoration*," the law requires the ZBA to enforce their plain and accepted meanings. The Merriam-Webster Dictionary defines (in relevant part) "*Reconstruction*" as "*to build or assemble (something) again.*" With his Proposal, the Applicant is not asking "to build or assemble the Existing Cottage again," but instead he is asking to completely replace it with the (much larger) New Lakehouse. The definition of "*repair*" is: "*restore by replacing a part or putting together what is torn or broken*" to "*to restore to a sound or healthy state.*" The Applicants Proposal admittedly "restores" nothing of the Existing Cottage and thus cannot qualify as a "*repair.*" Which brings us to the term "*restoration*," which is defined in relevant part as: "*a bringing back to a former position or condition.*" Tearing down the Existing Cottage and replacing it with a structure that is three times taller and three times larger, is hardly "*bringing it back to its former condition.*"

While this may be a tedious exercise in elementary school English, it should be of great significance to the ZBA as it would be the exact approach taken by a court of law in reviewing this

decision (either way). Upon review of this Proposal, a court of law would surely find that the circumstances do not fit within the plain meaning of these terms, making inapplicable the entire Section 7.5.3 upon which the Proposal relies.

III. EVEN ARGUENDO, IF SECTION 7.5.3 APPLIES (WHICH IT DOES NOT), THE APPLICANT STILL HAS NOT PROVIDED ANY ACTUAL EVIDENCE THAT THE EXISTING COTTAGE HAS BEEN DAMAGED TO AND EXTENT NECESSITATING THE PROPOSAL.

Expanding on the citation above, the additional pertinent language of Section 7.5.3 provides:

Nothing in this Ordinance shall prevent the reconstruction, repair, or restoration and the continued use of any non-conforming building or structure damaged by fire, collapse, explosion, acts of God or acts of the public enemy...wherein the Board of Appeals has first determined that the continued use will be substantially the same as the previous non-conforming use and that such continued use will not be detrimental to the health, safety and welfare and that substantial justice is achieved."

(Emphasis supplied.)

Here, the Applicant simply states that "natural cyclic nature of the water levels in the Great Lakes, coupled with unanticipated rise of the water levels" has caused cracking in the foundation and slab to an extent that the Existing Cottage is uninhabitable. While that may very well be true, the Applicant cannot simply ask the ZBA to "take his word for it." The Applicant's packet to the ZBA contains no engineering reports, water level measurements/charts, or even any photographs of the damage to his slab/foundation. The burden of obtaining approval is on the Applicant, and without providing any evidence of damage, he cannot overcome the burden required to trigger Section 7.5.3.

IV. THE REQUIREMENTS FOR A VARIANCE UNDER SECTION 5.7.3 ARE NOT MET.

Section 5.7.3 outlines the general requirements needed to obtain a nonuse variance. Since most of the specific requirements of a nonuse variance overlap with the requirements for non-conforming structure improvements, there is no need to repeat why the Applicant fails to meet them. However, what should be addressed are the general standards needed for variance approval. The standard for granting a nonuse variance is "practical difficulty," that is, whether the literal application of the zoning ordinance provision would cause practical difficulty. Generally, this involves showing: (1) whether compliance with the restrictions of the zoning ordinance would unreasonably prevent the owner from using the property for a permitted purpose or would be unduly burdensome; (2) whether a grant of the variance would do substantial justice to the applicant as well as other property owners; and (3) whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare will be secured.

Here, the Applicant needs to prove that the Ordinance prohibits his reasonable use of the Parcel, or that it would result in an undue burden on him to comply with same. While constructing a residence that strictly conforms with the Ordinance might be limited and even considered "difficult" due to the Parcel's size and shape, that in and of itself does not make it "practically difficult" or "unduly burdensome." Put another way, a dimensional difficulty is not a "blank check" to completely ignore the Ordinance's requirements and build whatever the Applicant wants. Rather, the Applicant must provide evidence that its dimensional difficulty fits into a category for which a variance should be granted. Here, it does not.

In evaluating the gradation of "difficulty" and the severity of the "burden" on the Applicant, the law requires the ZBA to impose the following prerequisites:

- (1) the property cannot reasonably be used in a manner consistent with existing zoning;
- (2) the landowner's plight is due to unique circumstances and not to general conditions in the neighborhood that may reflect the unreasonableness of the zoning;
- (3) a use authorized by the variance will not alter the essential character of a locality;
and
- (4) the hardship is not the result of the applicant's own actions.

Even conceding that the Applicant can satisfy #2 and #4, he has not satisfied conditions #1 and #3 (nor can he). Since his purchase, the Applicant has been using the Parcel in a manner consistent with the Ordinance, residential use with a legally non-conforming cottage on it. If this use has already been occurring on the Parcel, how can the Applicant show that the Parcel "cannot be reasonably used in this manner?" This requirement is *per se* unsatisfied. Thus, while it may be "practically difficult" to build the proposed New Lakehouse within the confines of the Ordinance, it is not a "practical difficulty" to continue to use, or even repair/replace, the Existing Cottage that more reasonably fits the smaller lot.

In regards to condition #3, an approval of the proposed variance(s) would result in an alteration of the essential character of the neighborhood. The character of the neighborhood has long been established by houses of similar shape, appearance and spacing, on lots of standard sizes. Across Bluff Road from these lots is largely unobstructed beach access. Traditionally, the only exception to this general character was the presence of the Existing Cottage, essentially on the beach access area. While the Existing Cottage was an outlier, it was a very minimal outlier given its size and height. To grant a variance as requested would completely alter and expand this outlier into a much more obtrusive presence near the beach area to the detriment of the entire neighborhood.

CONCLUSION

We hope that the ZBA understands that it is not forced to approve the Proposal simply due to the non-conforming nature of the Existing Cottage. In fact, the language of the Ordinance and

Peninsula Township Zoning Board of Appeals
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Michigan law actually demands that the ZBA deny the Proposal. Again, if the Applicant was seeking to simply rebuild the Existing Cottage to its existing state, then he would likely be entitled to an approval. That is not what is being requested here. If the Applicant is generally concerned with the integrity of his Existing Cottage, he can seek approval to repair or rebuild to a substantially similar state. In light of the forgoing, we recommend and request that the ZBA deny the Proposal.

Sincerely,

ALWARD, FISHER, RICE, ROWE & GRAF, PLC

/s/ David H. Rowe, Esq.

David H. Rowe

DHR/DPG

c (via email):

Mr. & Mrs. John Snow
Mr. Tony Glinke

April 16, 2021

Zoning Board of Appeals
Peninsula Township
13235 Center Road
Traverse City, MI 49686

Re: Request No. 892
10602 Bluff Rd.
Hearing date: 4/20/21

Dear ZBA Members,

Our home is at 10605 Bluff Rd. This is directly across the street from the applicant's house at 10602 Bluff Rd. We have lived at our home for 24 years. We moved here in 1997 and our home has been a dream come true. We have enjoyed the neighborhood, the friends we have made here and the ambience of what Bluff Road and Old Mission Peninsula offers.

We are writing the ZBA because we are concerned that the neighborhood we love could be threatened by this proposal that appears to be a quick redo of 10602 Bluff Rd. on the idea of a quick flip for a big profit. It is my understanding that ACMEPEN started the project at 10602 Bluff Rd. without any required permits and it refused to stop the initial excavation even when instructed to do so by the Township. Finally, ACMEPEN applied for and received excavation permits after submitting an appropriate plan. On March 3, 2021, it received a Notice of Violation from the Health Department for soil erosion flowing from its property to our property. To date, it has not addressed this situation as instructed the Health Department.

ACMEPEN now seeks to continue to renovate this property in violation of current nonconforming structure regulations. The basis for this proposed new structure is that the current structure is so dilapidated it cannot be repaired. No evidence has been provided to support this assertion. If the home is beyond repair, we are not opposed to it being demolished and new equivalent home with the same footprint and height being placed in that area.

The proposed home now before the ZBA would significantly change the character of this section of Bluff Road and is an indication of ACMEPEN's continued disregard for Township zoning regulations and its neighbors on Bluff Road. The proposed house would increase light pollution, traffic and the intensity of use of the property. It would have a zero setback from our waterfront property. It is much larger than the existing house and would be an ominous presence casting a shadow over our property dramatically reducing the amount of sunlight to the area.

It is respectfully requested that the ZBA deny ACMEPEN's application for the proposed building structure.

Sincerely,

John Snow
Jeanne Snow

Christina Deeren
Director Zoning
Peninsula Township
13235 Center Rd.
Traverse City, MI 49686

4/20/21 Peninsula Township Zoning Board of Appeals Hearing

Request No. 892, Zoning R-1C

Applicant: CF Campbell, JML Design Group Ltd., 225 E. 16th St., Suite B Traverse City, MI 49684

Owner: ACMEPEN One LLC, 5168 US 31 N. Mailbox 8, Williamsburg, MI 49690

Property Address: 10602 Bluff Rd., Traverse City, MI 49686

April 19, 2021

Dear ZBA Members,

Our home is at 10591 Bluff Road. This is across the street from the applicant's house at 10602 Bluff Road. We have owned a home in Traverse City for 17 years. We have enjoyed the Bluff Road neighborhood and everything about the Old Mission Peninsula.

We do not support the applicants current request for variance approval for the following reasons:

- 1) First and foremost, Justan Helton (aka ACMEPEN) is a sophisticated and experienced real estate investor with over 10 properties in the Traverse City area. Mr. Helton purchased this property as a business investment (Acmepepen One, LLC) with the full knowledge that it was a non-conforming real estate parcel and structure.
- 2) The new building plans take this existing non-conforming property and structure, then makes it much, much more non-conforming in so many ways that it requires 6 zoning variances simply to comply with the existing township rules.
- 3) The increased intensity of use negatively affects the neighborhood.
- 4) There is no legitimate reason to increase the lot coverage from 25% to 31% which is not allowed by zoning regulations. Simple math shows $31\%/25\% = 1.24$. This is a very significant 24% increase from the existing lot coverage.

- 5) There does not appear to be a working septic system on the property and no plan has been put forth to address this situation. The proposed new structure will require a substantially larger septic system. This larger septic system will encroach upon and pollute the existing well on our property.
- 6) ACMEPEN seeks to re-construct this property in violation of current nonconforming structure regulations. The basis for this proposed new structure is that the current structure is so dilapidated it cannot be repaired. No evidence has been provided that the current house cannot be repaired.
- 7) The proposed home now before the ZBA is triple the size of the existing non-conforming house. This would significantly change the character of this section of Bluff Road and is an indication of ACMEPEN's disregard for Township zoning regulations and its neighbors on Bluff Road.
- 8) The computer-generated images included with the application package are pure fantasy. They are tiny compared to the actual proposed structure size. The view from our home to the new structure seems to be from about 100 yards behind our home, not from our front yard and porch. Attached to this email are accurate photos taken within the past week with actual size overlays of the actual proposed structure. Please compare these with the same images in the application package.
- 9) The proposed house would increase light pollution, traffic and the intensity of use of the property. It would have a zero setback to the south property line.
- 10) Because it is triple the size of the existing house, it will be an ominous monolith casting a shadow over our property and drastically reducing the amount of sunlight to our property and our neighbors. The proposed structure blocks the light, sunrises and moonrises from our neighbors which would adversely affect neighborhood property values.
- 11) The plan acknowledges no acceptance of current nonconforming structure zoning regulations and will adversely affect the property values and perspectives of ourselves and our neighbors.
- 12) The parking garage in the house presents a safety hazard when backing from the garage on to the curve on Bluff Road. A garage that is so close to Bluff Rd would put drivers (many of whom are already driving above the speed limit) as well as the occupants of the 10602 garage at increased risk of collision since there would be minimal space to see & pull out safely onto the road.

We respectfully request that the ZBA follow the existing township zoning guidelines and deny ACMEPEN's application for the proposed building structure.

Sincerely,

Tony Glinke

Kimberly A. Brown, M.D.

*William and Nicole Smethells
10547 Bluff Road
Old Mission Peninsula
Traverse City, MI 49686*

April 12, 2021

Christina Deeren, Zoning Director
Members of the Zoning Appeals Board
Peninsula Township
13235 Center Road
Traverse City, MI 49686

RE: Request No. 892, Zoning R-1 C
Applicant: CF Campbell, JML Design Group Ltd
Owner: ACMEPEN One LLC
Property Address: 10602 Bluff Road, Traverse City, MI 49686

We have examined the application and associated documents relating to this request, available online at the Peninsula Township website. Prior to commenting on the Basic Conditions [5.7.3(1)] to be met by this request, we have the following observations to make:

- The existing structure is a one story house with a roof just above the level of the road. The request is to replace that structure with a three story structure with two stories at or above the level of the road with a portion of the middle story serving as a garage.
- Although the footprint of the structure appears essentially unchanged in the drawings, the house is substantially larger than the existing one. The use of the lowest story is not clear in the drawings, but presumably it would be functional. The potential for increased intensity of the use of the property exists.
- To our knowledge, the septic system indicated on the drawings is inoperative.
- While damage to the existing structure is acknowledged in the application, plans to secure the new structure against future damage are not presented. Based on comments regarding water damage to the property stated in the request, we presume that the existing seawall is insufficient.
- Computer generated images included with the application suggest that the proposed house is isolated rather than being in tight proximity to the neighbors.
- Excavation work on the property, in 2020, within the road right-of-way, was begun without the necessary permits. The present request should be considered in that light.

*William and Nicole Smethells
10547 Bluff Road
Old Mission Peninsula
Traverse City, MI 49686*

Referring to the Peninsula Township Zoning Ordinance, Section 5.7.3(1) Basic Conditions, we have the following comments regarding parts (d) and (e).

- Erecting a tall building across the road from neighbors does not do "substantial justice" to those neighbors. It does substantial injustice instead. Properties are close together in that section of Bluff Road including a zero set-back between the existing house on the property in question and a neighbor's property.
- Allowing the variances has the clear potential to "cause adverse impacts on ... property values or the use and enjoyment of property in the neighborhood".
 - The proposed house is large enough to accommodate a more intense use of that property than at present.
 - The proposed house would restrict neighbors' enjoyment of the bay and thus their enjoyment of their properties and a likely depreciation in property values.
 - A one-story house with foundation repaired would solve the need to recover the property for tenancy without negatively impacting the neighborhood in terms of enjoyment or property values.
 - We can see no upside to the impact on the neighborhood in honoring this zoning appeals request and thus do not see any substantial justice being done as a result.

In our opinion, repairing the existing house, its foundation and seawall is much preferred. If that is not possible, then a similar one-story replacement would make sense. In either case, a functioning septic system or holding tank would appear to be required. The approval of variances would still be necessary, but the potential for intensity of use of the property would remain the same as now with no negative impact on the neighborhood beyond the temporary disruption of construction.

Sincerely yours,


William Smethells


Nicole Smethells

CC: Robert and Dawn Baetsen
Tony Glinke and Kimberly Brown
Kathy and Mark Primo
John and Jeanne Snow

April 16, 2021

Peninsula Township Planning & Zoning

13235 Center Road

Traverse City, MI 49686


RE: Objection to Request No. 892 Zoning R-1C – 10602 Bluff Rd, Traverse City, MI 49686

Dear Peninsula Township Planning & Zoning:

We reside at 10555 Bluff Road, Traverse City, Michigan, 49686. We are writing to express concerns about the request for variance for 10602 Bluff Rd, Request Number 892. We understand the request is for multiple variances to construct a three-story residence. We DO NOT support approval for the following reasons:

1. The application does not illustrate the damage described to justify the request to demolish the current structure.
2. The applicant indicates bearing soils have shifted and have not illustrated that any new construction can be safely built for long term stability and safety on the current soil structure.
3. Section 7.5.6 is referenced for indicating the Board may grant a variance for a residential structure on a legal non-conforming lot so that "the continued intensity of residential use of the lot is substantially the same as the pre-existing structure..."
 - a. The design set forth in the application is substantially larger, three stories, and utilizes more space than the existing structure while also increasing square feet significantly higher than what is currently on site; this indicates it does not conform to the current structure's footprint and, indicates there will be more intensity of use than what is currently in place.
 - b. The designs proposed do not provide sufficient information such as site rendering and floor plan for the lower level to sufficiently measure the current intensity of use which is required to be maintained; it does not illustrate whether the lower level will be plumbed for more bathrooms, kitchens, or have bedrooms which would not comply with the intention of maintaining intensity of use from the current state of the structure.
 - c. The current structure is mostly below road grade except for roof, the proposed structure is two stories above road grade with a lower level; it does not conform at all to the current structure.

Sincerely,



Robert and Dawn Baetsen

To: Peninsula Township Zoning Board of Appeals

**From: Mark & Kathleen Primo
10561 Bluff Rd.**

Re: 10602 Bluff Road Variance Application—Request No. 892

We do not support the applicants current request for variance approval for the following reasons:

- 1) The added weight of the proposed structure on a foundation built on the water and the configuration of the lot narrowly bordered by the road and the bay does not support adding on 2 stories including a 2-car garage.**
- 2) A garage that is so close to Bluff Rd would put drivers (many of whom are already driving above the speed limit) as well as the occupants of the 10602 garage at increased risk of collision since there would be minimal space to see & pull out safely onto the road.**
- 3) Since the structure would be so close to the road there is also increased risk that a driver could lose control & hit the house at 10602.**
- 4) The proposed structure would also have the potential to increase the septic usage on a system literally only a few feet away from the bay and potentially pollute the ground water that leaches into the bay.**
- 5) The proposed structure blocks the light, sunrises and moonrises from neighbors which would adversely affect the property values.**
- 6) The increased intensity of use negatively affects the neighborhood.**

Thank you for taking these concerns into consideration.

Mark & Kathleen Primo

Haggard's

PLUMBING and HEATING

"Business of Quality and Service"

"Charlevoix-the-Beautiful"

haggardsinc@hotmail.com

April 9, 2021

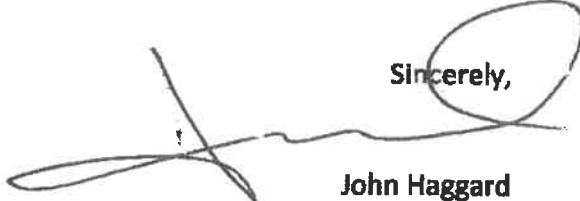
Peninsula Township Zoning Board
13235 Center Rd.
Traverse City, MI 49686

Attn: Request No#892 Applicant CF Campbell, JML Design Group Ltd. Parcel#28-11-625-009-50
for a variance setback and non-conforming uses and structures.

To Whom it May Concern,

Upon reviewing the above notice, I would like to express my view on the above plan request. Haggard's Plumbing & Heating is not opposed to the changes of the property and/or the request to the Zoning Board. If a property owner is fortunate enough to have the ability and the recourses in tis time to either build and/or improve their existing property, it would only help the economy continue to grow. It would prove positive for the local, county and state to do all we can to improve and promote growth in anyways possible.

Sincerely,



John Haggard
Haggard's Plumbing & Heating