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**PENINSULA TOWNSHIP
ZONING BOARD OF APPEALS MINUTES**

May 21, 2024
7:00 p.m.

1. **Call to Order** by Dolton at 7:00 pm
2. **Pledge**
3. **Roll Call** Cowan, Dloski, Wahl, Dolton, Dunn, Cram-director of planning and zoning
4. **Approval of Agenda** Dloski moved to approve the agenda with a second by Cowan.

Approved by consensus
5. **Conflict of Interest** None
6. **Brief Citizen Comments – (for items not on the Agenda)** None
7. **Business:**

1. Public Hearing for Request No. 917, Zoning = R-1B – Coastal Zone

Owner: Richard Wiener Trust, 1847 Wilson Avenue, Saginaw, MI 48638

Applicant: Raquel and Sean McGovern, 1245 Lake Shore Drive, Boyne City, MI 49712

Property Address: 11692 Bluff Road, Traverse City, MI 49686

1. Requesting a variance from Section 6.8 of the Zoning Ordinance to construct a second story addition above an existing detached garage 5 feet from the side property line, where 15 feet is required.

Parcel Code # 28-11-003-015-00

Dolton opens the public meeting and reads variance request 917.

Cram: this is a request tabled from the April 23, 2024 meeting. The pause in the proceedings was to allow the applicant to make some revisions. The packet includes both the initial proposal from April 3, 2024, and the new proposal to be presented tonight for comparison. The dormers were removed and so the footprint above the garage for storage was reduced. The flat roof is not draining properly and collects a lot of debris from the surrounding trees. The applicant would like to replace the roof and at the same time add some additional storage. This replacement would be a gabled roof with some storage space above. The existing garage is located 5 feet from the northern property line. They want to go up and the addition would not meet the required setback of 15 feet. The second story and the new roof requires a variance from the ZBA. A variance would not be required if they were replacing the roof like for like. We could allow for a gabled roof with no storage as it is a roof, but not adding any additional storage space. (Cram shows the photo of the existing garage from the front, and a side view of the existing garage) The tennis court was discussed at the last meeting. The tennis court is at grade and is not required to meet structure setbacks. The fence along the western side of the tennis court does exceed 4 feet in height and so is required to meet the setbacks for a structure. This is non-conforming. The

applicant has agreed to reduce the height of the fence, which would address the issue. This is not the subject of this variance request. However, the applicant wants to be a good neighbor and address the concerns of property owners to the north. The property has been surveyed and staked. The plan included in your packet is hand drawn and not quite to scale. We can confirm the setback from the existing staking and the property owner has noted the addition would not extend any further into the side yard setback. The building elevations are in the meeting packet. The revised plan still showed the eave on the northern side. Again, they drew a line through it and noted there would be no eave on the northern side. This means there is no additional encroachment towards the northern property line. The footprint is 24 feet wide by 37 feet because of the eave overhang. The site plan is not totally accurate. The dormers were removed. However, a balcony is still included, and a second story addition is still proposed. The township zoning ordinance was adopted in 1972. The existing garage was constructed in 1955, prior to the adoption of our zoning ordinance and prior to the time period the Grand Traverse Construction Code was issuing building permits, so we do consider the existing garage to be legally non-conforming with regard to setbacks. We did receive public comments again from the neighbor, which is included in the packet.

Dloski: the fact the garage was constructed prior to the adoption of the zoning ordinance does not necessarily justify granting a variance, does it?

Cram: correct. That is merely a statement of fact. Yes, it was built in 1955 and this could be a constraint. One could look at this, especially if there were not any alternatives, as to where a garage could be located. The construction from 1955 does not keep one from considering all of the conditions for approval in Section 5.7.3.

Dloski: it is my understanding the garage roof can be secure without a variance.

Cram: correct. The garage roof could be replaced. Section 7.5.4 does allow the repair and alternation of non-conforming structures. This allows them to repair the roof, but in order to go up as they are proposing and add an additional floor, a variance is needed under Section 7.5.1. I cannot issue a land use permit for an addition on a non-conforming structure if it does not meet the required setbacks, height, and other dimensional requirements.

Dloski: if they came in just to repair the roof, could you issue them a land use permit?

Cram: yes, for the repair like-for-like.

Dolton: just as a reminder Section 7.5.3 is for additions to non-conforming structures. This request must meet all of the 6 Basic Conditions. If the variance request meets all 6, the variance request is approved. If any one condition is not met, the variance request fails.

Richard Wiener P0 Box 250 Williamston, Mi. 48895

Tonight, I have brought my wife Raj Wiener, who is co-owner of the property, with me. The applicant is Sean McGovern, he is the applicant and contractor on the project. Sean can answer all of the technical questions you might have. We have come here tonight with a revised plan. We took your concerns very seriously and have a plan that meets some of those issues. Some of the issues were raised by our neighbor and some by members of this board. We have appreciably downsized the plan for lack of a better word. We did leave the balcony for passing things up and there is some window space. We removed the dormers and addressed the issue of the fence even though we believe after 40 plus years of the fence being in the identical same position, there is an

appreciable property claim we have there. In the interest of neighborhood comity, the fence issue will be resolved while incurring the expense of a pitched roof as a repair and gaining a little bit of storage space. At the last meeting, there seemed to be a misplaced perception we wanted to house people in this area. We do not want to do this. I would like to address some of the issues raised in the Maureen Madion letter dated May 15, 2024. She brought up the issue of grandchildren wreaking havoc, my phrase not hers, in the space above the garage. First, we do not have any grand kids. We are not interested in using this as a play area and do not believe it would be a safe place. She brought up an issue of a property owner being denied an ordinance. An ordinance is used to set policy; that is not this board's function. We are asking this board to grant this variance as we have answered every one of your concerns.

Dolton: are there any questions for the applicant from the board?

Dloski: this board can only grant a dimensional variance if there is something unique about the property that prevents you from complying with the zoning ordinance. There has to be something about the property such as narrowness or topography that prevents you from complying with the zoning ordinance. There is nothing here that prevents you from complying with the zoning ordinance.

Wiener: this board raised a specific set of concerns at the last meeting. The chairman asked that we come back with a new plan to address those concerns and we have come back with a more modest plan.

Dolton: asks if there is anyone who wishes to speak on behalf of the variance request. Seeing and hearing none, is there anyone who wishes to speak against the variance request? Hearing none, Dolton closes the public portion of the meeting. McGovern asks if he may offer some information. Dolton reopens the public portion of the meeting.

Sean McGovern comes up to the podium. 1245 Lakeshore Boyne City

McGovern: when you ask if there is anything that can be done to meet the zoning ordinance, if you were to take down the garage and move it further away from the sideline setback, you would not be able to come down the driveway and turn into the garage. You would not be able to build a proper size for a 2 car garage. In taking in all of the comments from the last meeting, I do not believe the board was telling us to do anything, but I was taking feedback from the neighbors, the Madions, and questions the board had. We took those comments to the architect and tried to address every possible issue to meet and exceed those questions, comments, and concerns. We had the architect lower the pitch of the roof. I wanted to go with an 8/12 to a 10/12 pitch roof. The stairway where you come up requires you to make a turn and you need headroom coming up into the attic. This requires us to use a 12/12 pitch roof. We were looking at different design features on how we could still lower the height, which was a concern of the Madions. Originally, the architect had designed it so we could put the trusses on top of the existing roof, pull back the dura roof, put the trusses on top of that, and then you build a new floor. In the new design, we have completely taken off the roof, which drops the whole elevation 11.5 inches. We took the roof down a foot. The other issue raised is taking off the existing roof and repairing it. The answer is yes; however, the same issue is going to come up again in a 3-5 year period. This is mainly due to the neighbors having a huge forest over there with very tall trees. There is not a fall, spring, or winter where those trees do not drop on that duralast roof and poke holes in it.

Yes, the roof could be replaced, and that means more expenses for the Wieners in the future. The reason we chose a pitched roof is the elements up here, which all of you know, are very harsh in the wintertime. A pitched roof also solves the storage issue. In the last meeting, the owner did agree to sign a document that the garage would never be used for living quarters, only storage. The balcony was downsized. There was an actual slider in the first plan and now it is a standard, single 36 inch door, with a gate on the balcony to help pass items through like a stand up paddle board.

Dolton: on the diagrams, I noticed the interior height space appears unchanged. I do not see any measurement of total height space on the original plan.

McGovern: the original total height was going to be about 23 feet, 6 inches. Now the height would be 21 feet.

Dolton closed the public portion of the meeting and brought the discussion back to the board.

Wahl: is the word addition defined in the ordinance?

Cram: no. Any time a term is not defined, we can use a common definition from Merriam-Webster.

Wahl: the word alteration is defined. Wahl reads definition. This may conflict with how we look at additions. I know they can be defined differently under the ordinance, but the definition of alteration includes addition.

Cram: an addition is a type of alteration to a structure because you are altering the structure by adding on to it. The flat roof is not working. If they changed it so there was a slight pitch so things drained off, it is not adding onto the structure it is merely altering it. The other part you need to look at is the intent and purpose under Section 7.5.1 that says it is not the intent to allow significant increases in the intensity of the previously established residential use on an otherwise unbuildable lot. Based on the site visit and the plans, the garage could be moved further from the northern property line. You would not have to turn to get into the garage (Cram shows photos of existing garage and property on the screen); you could drive straight into the garage. When we look at variance requests, we look to see if there are other alternatives.

Dolton: I would like to clarify several points. The flat roof is a problem as the applicant has expressed and I think we are sympathetic to that being a problem. There is the ability from the ordinance to restore a non-conforming structure to maintain its ability to be in service. Some type of minimally, but modest sloped roof would not require a variance.

Cram: correct. That would be an alteration of the existing roof without increasing the intensity.

Dolton: the other point, which is a kind of curious one, is we have talked about moving the entire garage, but the garage is actually 32 feet deep and it is the back end of garage with the 5 foot setback problem.

Cram: what is proposed is what the property owner would like because they wanted the garage to be aesthetically consistent with the existing residence. It is their prerogative to come in and request a variance for what they want, but we have to look at the conditions of approval and to think, to some degree, about future precedent.

Dloski: these are tough decisions and not easy issues to deal with and we certainly would like to make everybody happy, but we cannot. We have to follow the letter of the law and the law is very clear. If the application can be changed, so a variance is no longer needed, this body has to deny it.

Cowan: the roof could have a pitch put on it, but it would not have the storage space they are

clearly asking for. The way Larry (Dloski) explained it makes a lot of sense to me.

Dolton: the issue is in order to achieve a variance is the portion of the structure that requires the variance. In this case, it is the 5 feet from the property line, when it has to be 15 feet. The current structure as described would add an additional 11 feet of structure that is now only 5 feet from the property line.

Dolton requested Cram to go through the 6 conditions for variance approval. Each board member needs to give a reason for their yes or no vote.

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

(A). That any variance from this Ordinance: 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.

Dunn: No, I do not think we have a unique circumstance here.

Wahl: No, I do not think these are unique circumstances.

Cowan: No, simply because the building was built in 1955 is not a justification in my mind.

Dloski: No, there are no unique circumstances that would justify this variance.

Dolton: No, for reasons already stated.

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

Wahl: Yes, it is a legally non-conforming garage built in 1955 and not a self-created issue.

Cowan: Yes, I agree with Wahl.

Dunn: Yes, I agree with Wahl.

Dloski: No, it is a self-created problem because the owner is asking us to do something that he could do without a variance.

Dolton: Yes, the applicant desires to change the footprint of an existing structure that is legally non-conforming

(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.)

Dloski: No, this garage can be used without the variance being granted.

Cowan: No, I agree with Dloski.

Dunn: No, for reasons previously stated.

Dolton: No, because alternatives have been expressed and described that would not require a

variance.

Wahl: No, for reasons already 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.

Wahl: Yes, this would do substantial justice to the applicant as well as other property owners.

Dloski: No, substantial justice is not an issue here because they can utilize the garage and secure the roof. If we just start giving variances to just give variances, then we are going to get into trouble down the road.

Cowan: No, for reasons stated by Dloski.

Dunn: No, because of staff comments and for reasons previously stated.

Dolton: No, it is not substantial justice if we approve an expansion of the non-conformity when there are alternatives.

(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: No, it was clear from the one neighbor that they believe it would cause a detriment to their property value.

Dloski: No, for reasons stated by Dolton.

Dunn: No, because of staff comments and prior reasons stated.

Wahl: Yes, the property is far back and I do not think it is going to have an adverse impact on any of the neighbors. Any time you make an improvement to a home, it increases the neighbors' property values.

Cowan: No, for reasons previously stated.

(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.

Dloski: Yes, there is no change in use.

Dolton: Yes, no change in use.

Cowan: No, for reasons previously stated.

Dunn: Yes, there is no change in use.

Wahl: Yes, no change in use.

Cram summarized the results.

Condition A did not pass. There were 5 unanimous No votes.

Condition B had 4 Yes and 1 No.

Condition C had 5 No votes.

Condition D had 4 No and 1 Yes.

Condition E had 4 No and 1 Yes.

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Condition F had 4 Yes and 1 No

Cram: in order for a variance to pass, all 6 basic conditions must be met. Unfortunately, this was not the case.

Dolton: 5 out of the 6 conditions were not met

Dloski made a motion that Request No. 917 be denied with Cowan providing a second.

Roll call vote: Yes-Dunn, Dolton, Dloski, Wahl, Cowan

8. Approval of Minutes from the April 23, 2024, Meeting

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

Approved by Consensus

9. Citizen Comments None

10. Board Comments None

11. Adjournment Dloski moved to adjourn the meeting with a second by Dunn.

Approved by Consensus

Meeting adjourned at 7:46 p.m.