

Peninsula Township  
Zoning Board of Appeals  
June 18, 2024, 7:00 p.m.  
Lola Jackson Recording Secretary

PENINSULA TOWNSHIP  
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**PENINSULA TOWNSHIP  
ZONING BOARD OF APPEALS MINUTES**

June 18, 2024  
7:00 p.m.

1. **Call to Order** by Dolton at 7:00 p.m.
2. **Pledge**
3. **Roll Call** Cowan, Dloski, Dolton, Wahl, Dunn, Cram-Director of Planning and Zoning
4. **Approval of Agenda** Cowan moved to approve the agenda with a second by Dloski. **Approved by consensus.** Cram had a correction to the agenda. Under Business, Item 1, the request for an extension was actually an approval of 4 variance requests and the fourth variance is not listed on the agenda, but all of the information in the packet is correct. This was not re- published as this is not a public hearing; this is an extension request. The agenda amendment is to include the fourth variance request for No. 911. **Dunn moved to approve the agenda as amended with a second by Wahl.** **Approved by Consensus**
5. **Conflict of Interest** None
6. **Brief Citizen Comments – (for items not on the Agenda)** None
7. **Business:**
  1. **Extension Request for Variance No. 911, Zoning = R-1B – Coastal Zone (Originally Approved December 19, 2023)**  
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

Dolton asked Cram to go through the extension process.

**Cram:** Under Section 5.7.3 (3) (b) Each variance granted under the provisions shall become null and void unless the construction authorized by such variance or permit has commenced within 6

months of the granting of the variance and the occupancy of the land, premises, or buildings authorized by the variance has taken place within 1 year after granting the variance. The variance request No. 911 was approved by the ZBA on December 19, 2023. The 6 months would be June 19, 2024, tomorrow. The applicants reached out to me to ask questions about their upcoming land use permit. I notified the applicant their 6 month deadline was coming up quickly and they should be submitting a request for an extension prior to the expiration date. Our existing zoning ordinance does not talk about an extension process. So to be safe, I put it on an agenda for consideration by the ZBA to officially approve the request. They are not asking for any changes in what was approved. The 4 variances that were authorized by the ZBA on December 19, 2023 included:

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%.

The applicant is finalizing their building plan, so they can come in and apply for a land use permit. They have asked for a 6 month extension.

**Dloski:** what section of the zoning ordinance allows us to grant extensions?

**Cram:** our zoning ordinance does not talk about granting an extension. People can come in and apply for things that fall under the special use permit and land use permit. There is a process to request these extensions. The zoning ordinance is silent with regard to a variance extension. I spoke with legal counsel and they approved this method for handling a variance request extension.

**Dloski:** a variance extension process needs to be included when we amend the zoning ordinance.

**Dolton:** has there been any discussion on granting longer extensions or have there been any longer extensions in the past?

**Cram:** there is the potential for the ZBA to allow more than six months per a condition of approval. During the application presentation at the public hearing, if the applicant said I do not think it is realistic that I can meet this time frame and I am requesting 2 years to get this done, that could be a condition of approval by the ZBA. With some of these more complicated variances, the applicants are running into trouble meeting that short timeframe.

**Dolton:** board discussions or concerns? Hearing none, I will entertain a motion for approval.

**Dunn moved to approve the 6 month extension for variance request No. 911 with a second by Cowan.**

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

**Approved Unanimously**

## **2. Discussion on motions and conditions of approval**

**Dolton:** we had something of a controversy over the concrete crushing variance we approved.

**Cram:** I just want to emphasize the importance of us documenting the intent of approvals through motions and conditions of approval. If a motion is vague, it can be interpreted to mean many things. In the case of the concrete crushing variance, I believe the minutes reflected the

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decision the ZBA made when you affirmed the zoning administrator's decision that concrete crushing is a heavy industrial use and not allowed in the A-1 zoning district. But under unique circumstances, because the previous zoning administrator did not make that determination and the fact there is an on-going violation and the community would like to see this property cleaned up, the ZBA authorized for a temporary concrete crushing activity to deal with the concrete on the property. The information the applicant presented was that it would not be beneficial to haul the concrete off to an appropriate location. They represented to you they needed to use this concrete on the site and by using the crushed concrete on site, it would eliminate truckloads of concrete leaving the property, getting crushed somewhere else, and then having to come back to the site as the intention was to use the concrete on the property. The motion read:

**I move to affirm the zoning administrator's decision, but due to the unique circumstances associated with the demolition permit to allow the concrete crushing to commence as to the building that has already been demolished in light of the applicant's obtaining an EGLE permit and a county permit, and appropriate land use permit as well as the work being completed within 6 months. The applicant does have the right to apply for an extension if necessary with a second by Dunn.**

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

**Approved Unanimously**

**Cram:** the actual crushing was to take 5-7 days. When the land use permit came in, I put a condition of approval that it be completed in 14 days, which I thought was reasonable based on what was represented to staff, the community, and the ZBA. The applicant believes they have 6 months to do this.

**Dolton:** I think what Jenn (Cram) is indicating is a situation where she has the ability to impose conditions on a land use permit and so she imposed conditions based on the minutes and her understanding of the discussion the board had and the representations that were made. The applicant argued any conditions needed to be part of the motion. The conditions imposed through the land use permit and the conditions the ZBA has imposed on the applicant may be different. There is a potential legal risk that could be litigated in a way that we really cannot anticipate.

**Dunn:** I remember them saying they could get it done within 5 days once the work actually started and they could not schedule a time because these large companies won't come up here to do a small job. I thought they had to start within 6 months and they had to get it done 5 days after the work commenced.

**Cram:** we can see how the motion as documented could have a different interpretation by the applicant and I completely respect the applicant's (Mr. Miller) interpretation. He is trying to get this property cleaned up. The other item noted in the minutes was the material was going to be used on site. The board chose not to put any conditions and that, material is now being crushed and he is proposing to sell it.

**Dunn:** he said he was going to use it on site.

**Cram:** that was not acknowledged and so in the future I will be working with legal counsel to draft proposed motions. I think we should have standard conditions of approval that go with every variance. One condition of approval would be to put into the record even if it is in the zoning ordinance to note you need to take action to get a land use permit within 6 months of approval. That puts it on the record you need to do this. There would be certain standard

conditions of approval and even though it might be redundant because it's noted in the zoning ordinance, the applicant does not always know to look in the zoning ordinance to know what the requirements are.

**Dolton:** this case even went beyond what would be standard conditions of approval. We did not circle back and have a discussion before the motion was made as to whether any of the discussion that was made among the board and representations made by the applicant needed to be articulated in conditions of approval.

**Dloski:** so the motion does not require them to use the concrete on site?

**Dolton:** no and that is on us. Cram raises a valid point that there is some risk if she simply interprets the minutes and imposes the conditions she thought were applicable. The ZBA is probably the better place to make those conditions within the motion.

**Wahl:** that was a unique situation because there was so much discussion in terms of what was going to happen.

**Cram:** this is a wonderful learning experience for us all. In the end the property is being cleaned up. As the zoning administrator, I do have the ability to put conditions of approval on the land use permit. You specifically said he had to obtain a land use permit, so that was a good thing in the motion. We have put in some guard rails to prevent this from becoming a full-blown commercial concrete operation. We are working with the applicant and the crushing is taking place and they are going through it quickly and I do not think it will take 6 months.

**Dolton:** there is a lesson for the board in that we feel certain representations are important to our approval and we need to include them. I would ask Cram to create a document regarding the standard conditions of approval for us to review and have a discussion.

**Cram:** yes, I will create that document for review. I have also been talking to legal counsel about changing the format of the findings of fact and actually having a formal finding of facts and resolution that is adopted after the ZBA makes an approval. This is good timing as Tori Westmoreland will be joining us in zoning and once she is up to speed, she will be your primary staff liaison. I will be here to support her and this board as the Director of Planning and Zoning.

8. **Approval of Minutes from the May 21, 2024, Meeting** Dloski moved to approve the minutes with a second by Cowan. **Approved by Consensus**

9. **Citizen Comments**

**Nancy R. Heller 3091 Blue Water Road:** (from the audience) I heard from a neighbor that they were pleasantly surprised at the concrete crushing operation. There has been no dust or noise.

10. **Board Comments** None

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

**Approved by Consensus**

Meeting adjourned at 7:22 p.m.