TORCH LAKE TOWNSHIP

ANTRIM COUNTY, MICHIGAN

Community Service Building

Zoning Board Meeting

APPROVED Minutes 5-0 WITH CORRECTIONS

April 11 2018

**Present:** Chairman: Dave Barr

Vice-Chairman: Bob Spencer

Member: Mark Jakubiak

Alt Members: Greg Sumerix & Bob Cook

**Absent:** Secretary: Ralph Houghton

Member: Norton Bretz

**Others:** Alan Martel-Township Supervisor

Deb Graber - Zoning Administrator

**Recording**

**secretary:** Jacqueline Petersen

**1.** **Call to Order Regular Meeting:**

Meeting called to order at 7:03 pm by Dave Barr

Roll call was conducted by Barr

Others were introduced by Barr (see above)

**2. Approval of Agenda;**

Barr announced changes to the agenda:

1. Agenda states “renewal of 11/30/17 meeting minutes” and should say “11/29/17”
2. Move approval of 11.29.17 meeting minutes discussion to after #6 to expedite Mr. Bergen’s time

Barr called for any other comments

Motion to approve Agenda by Barr - Roll Call vote was taken with no objections; passed 5/0

Agenda for 4.11.18 approved

Next Spencer mentioned possibility of a discussion regarding a memo received by (name unclear) Todd Millar’s assistant/ helper (voice unclear)

Barr asked if he would like it added to the Misc. section, Spencer asked for it to be placed after Norton’s report Spencer said move #10 to #11, #11 to #12, #12 to (voice fades off).

Barr announced there are two appeals the ZBA will be hearing tonight.

Bergen and Bucklew / Petrillo

Barr asked if there were any cases / issues with any conflict of interest by any ZBA board member with either of these appeals. There were none

Barr outlined the appeals:

Appeal 2018-02 - approval or extension of a previously granted appeal

Appeal #2 - Bucklew / Petrillo asking for an interpretation of Zoning Ordinance 2.16B.3

Barr stated procedure was to start out each appeal with comments from township officials: Alan Martel or Deb Graber; we will read any correspondence received, then applicant will present their case, then any public comment, the applicant response, we will then have a vote to close the public hearing, we will then go into deliberation. Please only respond if a member of the board asks you a question when we’re in deliberation.- that keeps it so everything is being done the way it should be.

**Barr:**

Beginning with Bergen - a renewal or extension for a variance granted in 2013.

Barr confirmed everyone had their appeal copies

Copies of the Blueprints for the Bergen Residence (Cardinal Design Revision A1.1 7.15.2015) were distributed. (ZBA4.11.18A)

Copies of 3.26.18 letter to TLT ZBA from Pat Baker in support of Bergen’s appeal were distributed

(ZBA4.11.18B)

Copies of TLT Approved Meeting Minutes from 12.11.13 approving Bergen’s variance request were distributed. (ZBA4.11.18C)

Barr invited Bergen to the mic

Bergen extended gratitude for the issue being put on the agenda and to Deb Graber for help with the forms. His wife, having had surgery on her leg, would've attended as well. Bergen explained changes in his circumstances that led to the delay of the project. Bergen also stated his driveway has a creek that comes through it, and a bridge limiting the location of the proposed addition. Bergen also stated snow turns to ice in the 165’ walk up the the driveway to the home, and creates a safety issue. Due to the stream there is a culvert under the bridge and ices up quickly with the west wind blowing above and below the bridge. We applied for a 5’ addition, but will only need 4.6, 4.7 to the drip line of the addition. It’s a 20’ pie shaped area. Spoke with neighbor (referenced letter) and they have no issues. Trying to approach this from a safety standpoint.

Bergen distributed pictures of the ice forming (ZBA4.11.18D and ZBA4.11.18E) and a picture of the pie shaped section referencing the variance. (ZBA4.11.18F)

Jakubiak asked if anything had changed from December 2013 and today until now on the property.

Bergen said no it is identical

Jakubiak clarified that no dimensions, location - nothing changed

Bergen confirmed it is identical and that nothing changed

Spencer asked Barr if we will be putting more into the finding of fact

Barr stated that he would when we got to that point

Spencer confirmed and stated to go ahead

Bergen stated he had nothing further at that time

Barr read the letter from Pat Baker in support of the Bergen appeal

Barr asked Graber for comments

Graber stated she had taken pictures and shared them previously with the ZBA and invited them to visit the location and had no further comments.

Barr asked Martel for comments

Martel had none

Barr asked for comments from the audience

there were none

Jakubiak made a motion to go into deliberation

Motion was seconded by Spencer

Barr took roll call vote: all were in favor, passed 5/0

Barr instructed that now in deliberation the applicants are only to speak to answer questions asked of them by zba members.

Barr asked for comments starting with Spencer:

Spencer suggested findings of fact from 12.11.13 ZBA meeting be brought forth

Spencer stated he looked to see if any changes or amendments created any problems for the Bergen proposal and found none

Cook stated if we are carrying forward the decision from 2013 no need to rehash the reasons -

Barr polled the zba for agreement - all agreed

Barr asked for motion to bring forth (accept) the finding of facts from 12.11.13 zba meeting

Spencer seconded it and stated the safety issue should also be included in the finding of facts

Barr agreed. Barr stated the four criteria to grant the variance had been met.

Spencer asked Barr if he would be reading each of the criteria and voting on each one or as a whole, then stated he would be voting yes regardless.

Barr read each of the criteria pausing to ask each zba member if they were in agreement of it having been met. - All agreed

Motion by Jakubiak to accept, approve and grant the variance renewal, Motion was seconded by Cook and a roll call vote was taken all in favor. Motion passed 5/0

Barr asked Bergen to work with Deb Graber who would be following up with a letter in the next few days.

Bergen thanked the ZBA and exited the building.

Barr moved on to the minutes from the 11.29.17 special hearing and confirmed that all members had received the packet with the minutes from the last meeting. (11.29.17)

Barr stated the packet contained the comments from Bucklew’s attorney Wendell Johnson, Mr. Martel’s comments and Mr. Laidlaw’s post hearing comments (sworn affidavit).

Barr: Mr. Spencer has redone the minutes that our recording secretary had done. Barr asked if the recording secretary had had a chance to review them. She stated she had not. Barr stated he was unsure if the actions of Spencer had stepped a boundary by not including Jackie (recording secretary) in re-doing these or….

Spencer stated “whatever you people are comfortable with. I did that and I talked to Jackie when she was on vacation. I listened to the audio - not all of it, as it takes an hour to go thru each five minute segment. I basically transcribed and indicated to Jackie that I was going to do it but we did not have a lot of time to talk about it. If you want you can take Jackie’s minutes and then I’ll go thru and add in any suggested changes and add them in that way.

Barr stated that he had reviewed the original minutes of the recording secretary and felt they were accurate and concise, and he’d read Spencer’s, which included more detail and has no problem with Spencer’s version.

Spencer apologized for the amount of detail and for only having given them to the ZBA that evening.

Bob Cook asked Spencer if the information in his version of the minutes could be verified

Spencer said yes and that the audio is available

Bob Cook stated it would be good to keep the recording

Spencer stated that the MTA minutes be taped but erase the tapes once the minutes are approved

Cook verified that Spencer’s intent was to make actual changes to the minutes and asked him to read through the substantive changes

Barr agreed to go through the changes - the emailed copy showed them in red -

Bob Spencer’s version of the 11.29.17 meeting minutes (ZBA4.11.18G) was read by Bob Spencer in its entirety.

Spencer read through each change individually, explained it and reread the sentence, sometimes paragraph again. Having taken over 90 minutes to review the changes, Spencer stated the changes he made, were mostly the addition of words for clarification, discussion items being moved where he thought they fit and the letter Barr read dated 5/26/17 to the Bucklew/Petrillo's outlining requirements and granting a 30 day extension that was inadvertently left out of the original minutes. Bob Spencer’s meeting minutes will be included in these meeting minutes as the new draft meeting minutes - with the exception of Paragraph #9 on Page 11, beginning with **“ Fact: An “Application…….” and ending with “to be posted on site.”** as this was **not** a found fact on the recording of the 11.29.17 meeting.

Bob Spencer confirmed that the above was not on the recording.

Barr called for any other discussion regarding the minutes

Bob Cook made a motion to approve the 11.29.17 meeting minutes as amended by Bob Spencer

Jakubiak seconded the motion

Barr conducted a roll call vote; all in favor

passed 5/0

Break 8:50pm

Barr called meeting back to order at 8:56pm

Barr stated the purpose of the was to interpret zoning ordinance 2.16B3 He also stated anything that can, should be done to keep the meeting on course.

Therefore: Issues regarding this case, but not relevant to the agenda of interpretation of Zoning Ordinance 2.16B3 were intentionally left out of these meeting minutes. All discussions, tapes, letters and documents discussed or referenced herein are available for review through the Freedom of Information Act.

Barr asked for comments from Martel who had none

Barr asked for comments from Graber

Graber stated back in December 2017 Bucklews received a letter from her, to remove the deck after the last hearing. They contacted her with two concerns. 1. They felt that the permit itself was never required because of what the existing (Old) ordinance stated. When I read through the old ordinance I had a little difficulty refuting it. and being in this position since last October.. The second concern the Bucklews had was if there were any other options than just removing the deck. Graber then reviewed the interpretation aspect, which I was going to ask for one myself as there are other decks along Grand Traverse Bay that would not meet the new ordinance and may not be in compliance, so to do our own due diligence, making sure that we are not selectively going after someone and that we would treat anybody in the community the same. You look at every property and you evaluate and it fairly. So I accepted the appeal in January, prior to deadline set for removal of the deck. Don Bailey came into the office with a site plan (ZBA4.11.18H) (distributed) and requested a permit to revise the size of the deck. Graber informed him she was not in a position to make any changes to the size of the deck, but they were willing to compromise, so I let them know they could go to the zba, discuss it with the zba and the zba was in the position and they could negotiate with them. So we are here today to get an interpretation on the OLD ordinance, which may have impact not only on this property, but others. I received Email from Jeff Bucklew where former zoning administrator Vey did extend the deadline on the old permit due to his vacation. (Vey’s). She has copies available should anyone wish to see it. (ZBA4.11.18I) distributed

Barr distributed copies of four (4) letters submitted to the township

ZBA4.11.18J - Letter from Bruce Laidlaw 5103 Old Park Road; to TLT ZBA dated March 29, 2018 was read aloud by Dave Barr. Laidlaw is in protest of the request for interpretation he states, based on its lack of merit and he feels the petition was improperly submitted.

ZBA4.11.18K - Letter from Anja Lehmann 4749 Michigan Trail; to TLT ZBA Dated April 11, 2018 was read aloud by Mark Jakubiak. Lehmann is in protest (challenge) of the appeal hearing based on its lack of merit and object to the decks applicant’s contention that the deck conforms to applicable zoning ordinances.

ZBA4.11.18L - Email from Dennis Rogissart (neighbor to Bucklew) in support of Bucklews was read aloud by Mark Jakubiak

ZBA4.1118M - Email from Kira Cervoni (neighbor to Bucklew) in support of Bucklews was read aloud by Dave Barr.

Barr asked Bucklew to present his case

Bucklew distributed an outline of his comments (ZBA4.11.18N)

1. Seeking interpretation of Section 2.16.B3
2. Deck is and has all along been free standing and is in compliance with the ordinance at the time it was constructed (shed was attached but is no longer)
3. Former Zoning Administrator confirmed 4 times the deck was legal and considered unattached
4. ZBA stated at special session 10.27.15 Zoning administrator stated “It didn’t apply, was moot and not-relevant”
5. Bolts and wood removed, then a permit was granted for an unattached deck - 7.20.17 - 8 days before new ordinance in effect.
6. We desire to be fair and are Willing to make accomodations!
   1. willing to remove a portion of the deck
   2. apologize and regret the fact we did not obtain a permit on day one, before we began to build

Bucklew asked the zba “Put yourself in our shoes and ask who should we be listening to? the Zoning Administrator seemed like a reasonable person to listen to, and he’s telling us repeatedly over the course of several years “Your deck is legal, and I’m going to give it a permit for it, even though you don’t need it, as a precautionary thing…” And you , the ZBA discussed it... it was in the minutes of that session! Now it’s not the “revised” minutes - but is in the first minutes... where there was a vote on the question of attached or unattached. There was a vote, Spencer voted No, one person abstained, three people said yes and it passed. It was considered a “moot” point. Finally we removed the bolts so there’s nothing there. When I received the permit on 7.20.17 before the new language came into effect, we took the bolts and screws out so now there’s really no way one can say it’s two attached structures. It’s not. It’s a deck with a fully moveable shed sitting on top of it.

Bucklew stated he wants resolution to be fair and consistent. He has followed the guidance he was given, from the DEQ, Soil Erosion and Zoning board. He is seeking interpretation of Section 2.16B.3 as he believes the deck to be unattached and not requiring of a permit at that time. Bucklew stated he is willing to remove some of the deck.

Barr clarified that the shed was an NOT an issue any longer due to it being moved out of the setback

Barr asked if anyone had questions for Spencer

Spencer stated that this group has not made the decision that the shed is not an issue and needs to discuss the shed.

Barr said he didn’t understand what decision had to be made, if the shed was not in the set back then it is irrelevant to us in my opinion.

Spencer said “Well in **my** opinion we have to talk about what the shed IS.”

Barr “OK, we’ll talk about what the shed IS but I don’t know…”(Interrupted)

Spencer “appreciate your presentation Mr. Petrillo.”

Several voices correcting Spencer that it was Mr. Bucklew

Spencer stated he had previously thought the shed was built first, then the deck

Bucklew stated that he’d purchased a pre-fab shed from Home Depot and contracted with Bailey for the deck. He also said the structure that the deck was sitting on is the deck and I can show you pictures I took this evening (the voice is muddled here)

Spencer stated “Maybe when he’s finished we can have our discussion .”

Barr informed him they would when they got to that point

Bucklew stated again that tonight all he was seeking was in interpretation

Barr agreed and reminded Spencer that the discussion needed to be kept in that context

Barr asked Cook for any comments

Cook: “if we are sticking to strictly interpreting the ordinance then I will hold my questions”

Barr: “ yes, thank you”

Barr asked the other members for comments and questions

Spencer: to Bucklew “One comment you made tonight was that the deck and the shed was all one structure. I wanted you to react to what I heard, I want to be sure I’d heard that correctly.”

Bucklew: “If I said that I misspoke. I don’t see them as one structure.” As I described, the shed is prefab and it can be picked up and moved. All of the pieces pertaining to the shed have been removed and what remains is the deck.

Spencer: “What you said was the shed was sitting on the deck.”

Bucklew: “That is correct.”

Barr asked for further comments for Bucklew and there were none

Barr for any comments from the audience -

Bruce Laidlaw made the following comments:

Laidlaw stated he watched this thing be built and it is not true to say the deck was built and the shed was put on top of it. He stated the shed was built a free-standing structure and wondered one would get in the front door being 3’ from the beach? Next came the deck with steps leading to the door. Laidlaw distributed a photograph of decking with bolt attachments (ZBA4.11.18O). He stated that not withstanding what the former zoning administrator said, this is not an unattached deck.

Bob Cook asked Laidlaw when the picture was taken and he was not sure but said sometime after Sept. 15 when shed was removed. Cook asked that we consider Deb Graber’s more recent photo as relevant from December. Laidlaw said the deck could not have held up without the support of the shed. He states the base of the deck is still attached to the shed and has never been free standing. Laidlaw stated he is aware the Bucklews wish to resolve and that the twp atty advised them to move the shed and get a variance and they have been given plenty of time and the only way to resolve it now is to DEMOLISH THE DECK.

Barr thanked Laidlaw and asked Bucklew for response

Bucklew responded that there are obvious differing views on what is built, but the pictures will unequivocally show the deck and the shed are indeed separate structures, moved and and reduced. Bucklew showed the ZBA pictures on his laptop taken that day. He then stated “this is what we were told and this is what we believed.” ZBA members looked at the photos and asked questions of Bucklew for clarification.

Spencer: I’ve always understood that the shed was built first and the deck next and they were attached. I’m struggling with if you build a deck up on stilts off the ground you have an understory that is designed to hold up the shed, so you have a shed and an understory part of the shed because the deck wasn’t there yet. So you’ve got this box on top of a framework that has no flooring, no decking, no flooring so the box is on top of the shed structure. The deck structure has a deck and its as an elevated deck as determined by the ZBA August 2015 - elevated deck. So the shed got built first and to do what they did they had to put a support structure underneath it because when you pick up the shed the floor goes with it. So if you remove the shed that built before the deck it seems to me you would have to remove the entire support structure of the shed. If you remove the shed you remove the entire support structure because they’re all part of the shed.

Bob Cook stated: You wouldn’t necessarily HAVE to remove the entire support structure as part of what became of the deck. Looking at the picture, they moved the shed back and rebuilt its own separate support structure for the shed where they moved it.

Bucklew affirmed

Barr stated he wanted to be sure the discussion stayed on track of the interpretation NOT THE SHED

Spencer stated he understood but was just getting to his point. He went on to say that the Bucklew’s request for interpretation stated that it was in regards to their “unattached deck” Spencer stated he did not agree with the wording of “Unattached.” and it needed to be talked about. If we are to interpret the zoning ordinance it should be the one in effect - we don’t have “Old Language” we have “Language in effect.” And if we interpret the zoning ordinance we have to say what’s in effect today. And we should only interpret the ordinance in effect. That’s my position. The unattached deck is a different discussion.

Graber commented: “This township does give out after the fact permits, it happens. I’ve only been in this role a few months but I’m, trying to stay fair and unbiased, so when I read this ordinance that was in effect when the deck was constructed in 2014 the ordinance that was in effect is why I gave them the guidance to seek the interpretation of that version. This was the guise they were under and this is the ordinance under which they were advised. Deb wanted to see an interpretation of the old language as well. Twp Atty and Supervisor agreed that this question had never been answered by the zba and was a valid question.

Bob Cook: Which 2.13B3 are they really talking about?

Graber: Defined and verbiage clearly stated in the appeal it would be the old language

Laidlaw: Whether or not the property owners are gaming the township is not the issue. 11.28.18 Vey said to remove shed and what was left would be considered deck - what was left was the foundation of the shed - not a deck. The ZBA thru order and appeal signed by the ZBA Chair says the intent of the permit was a freestanding deck which this never was. Discussion between Laidlaw and Spencer discussed the “Order of the ZBA” referring to the 11.29 hearing, both were looking thru documents and Barr confirmed a date of December 2 and a letter from Houghton and Barr informing Laidlaw of the ZBA’s decision.

Spencer disagrees with the date - lots of pausing and papers shuffling then referenced a letter sent by ZA Graber whereas she spoke with the contractor. Spencer stated the ordinance went into effect 7.8.17

Barr stated again the importance of staying on topic and Spencer said he was getting to his point.

Spencer - Aug 11 2017 in email dated 1-17-18 Deb emailed ZBA to say she had met with Bailey on 12.27. He informed her he had “unscrewed the blocks holding the deck to the shed.” on August 11, 2017 not July 20th. So if they detached the shed on 8.11.17 which zoning ordinance is in place?

Barr - THE point is: as stated earlier, we talked about this….. and via notice in the paper to the public - Ordinance 2.16B3, as written at the the time of 2014 is WHAT THEY WANT to be interpreted. OLD language is requested and that is that.

Spencer: I understand but it is OUR decision to make irrespective of what was in published the paper. If they ask us to interpret the old language we don’t have to we can interpret that it doesn’t apply because it’s the old language. The old ordnance wasn’t in effect when the deck was detached.

Bob Cook asked : “if we do that, with the wording, associated with the set back, is totally different in the whole deck as in the set back area and has to go beyond 50 feet because the change was to reduce the 50% of the set back

Spencer: What that was intended to do is not the question to answer.

Cook:we have to interpret section 3, and the whole section 3; the unattached deck is one, and the 50’ setback under the old language, which encroached on the set back (under the old ordinance). If the 50% was changed and the intent of the new ordinance was to ensure no decking within 50’ - is this deck excluded?

Spencer: Any structure is excluded from the 50’ front yard set back under the new ordinance.

Part of the intent was to require that if anyone was to put anything in their front yard set back that they had to go the ZBA to request a variance.

Graber - It is not written that way

Spencer-It is what it means

Graber- But it’s not what it says

Barr - We have to go by what it says, not what we think it might mean

Barr - What is 2.16A in the old ordinance?

Spencer read from the ordinance and surmised that it meant you can’t double dip on setbacks.

Bucklew -Understands Spencer's point but to be clear he was asking for interpretation on the OLD language because it was built in 2014. Bucklew reitterted that both the ZBA and Josh Vey that the deck was legal. First get past that before you look into timing of bolt removal. We can’t get to the discussion until the zba goes back and reverses the decision. The ZBA must accept responsibility that all the communication has come from the Zoning Administrator - had no idea you’d change your mind or not agree with administrator, must live with the decisions made at some point, not argue when bolts were removed, making it a legal deck. I extremely frustrated. I feel like I’m following the spirit of the law of what's here and all I’m getting here is you looking for facts to deny the deck. Bob and Bruce are in good company to keep looking for facts to deny the deck.

Spencer “who do you refer to when you say WE”

Barr - apologized for Bucklew’s frustration and expressed that it is not the intention of the zba, and that he understands what he is saying and that as a board are trying to sort this out. You wanted an interpretation of the old ordinance and in my mind we are running off in all these directions that have nothing to do with interpreting the old ordinance.

Bucklew agreed

Barr said we need to clarify that within ourselves

Spencer - I’d like to hear from the other and I agree with Mr. Petrillo

(corrected by several again to Bucklew)

Spencer stated that he feels in his experience in this particular situation the zba has been quite consistent in its actions and with mostly unanimous votes. The zoning administrator must enforce the actions of the zba. It was the zoning admin’s responsibility as of 8.13.15 to enforce the decisions of the zba.

Barr - I agree. AGAIN though, this is NOT what we are here to discuss and I’m going to say it again. We are here to interpret that zoning ordinance and I would like Laidlaw to say what he wants to say.

Laidlaw- I agree the petition was asking for the old ordinance to be interpreted, and if you agree, Mr. Bucklew, that it was an unattached deck then you could interpret that to mean that deck was perfectly legal. (voice muddled and inaudible here). It was firmly attached before that and additional problems now with something that doesn’t exist anymore. How an interpretation of the prior wording of an ordinance is going to legalize this mess then I don’t know but if you agree that a deck is perfectly legal if it is attached to anything other than the dwelling then the interpretation Bucklew is looking for is correct, but the intent was for a free standing deck and this never was.

Barr asked to hear from the other zba members for comment

Sumerix: Whether to apply new or old ordinance is based on attached or unattached issue.

Jakubiak: I understand both sides, and can see Bucklew is trying everything in his power to comply. Former Zoning Administrator Vey gave him bad advice - Ultimately was the shed part and parcel or is the deck free standing?

Cook: Prior decisions of the ZBA; if deck is treated as a unit, it is assumed that the shed was attached therefore had a violation and secondarily there was a violation in extending beyond the OHWM; issues need to be addressed in the shed becoming detached - OHWM redetermination - shed still exceeds 25’ setback and would need modification to comply to old ordinance. It is not one decision, it is a couple. Deck can be determined now as unattached.

Barr called for a motion to close the public session

Motion made by Cook to close the public session

motion seconded by Jakubiak vote taken, passed 5/0

Discussion by members of the zba took place -

Spencer voiced concern that it is a bad precedent and by statute of the zba is not supposed to interpret old wording of an ordinance and does not agree with a retro-interpretation. We have to interpret the entire old ordinance not just one paragraph

Cook- Is there something we can do to structure a deal to work through this agreeable to all parties?

Spencer -. We should rule non-compliant under the old ordinance and under the new ordinance as well. Spencer said Millar recommends that if the deck and shed were seperated substantially, the the property owners can file for a variance and that is a reasonable approach. Spencer also thinks the zba should direct the zoning administrator to meet with the property owners and come up with 1-3 options for resolution. The ZBA has no authority to direct or supervise the zoning administrator. My recommendation is to deny the interpretation and provide directive on how to proceed.

Cook- agrees with allowing administrator to facilitate a discussion to resolve with the homeowners - with parameters from the ZBA. Cook asked if the ZBA could negotiate with the homeowners a deal based on guidelines of operation.

Barr- the ZBA’s job is to negotiate and give benefit to the homeowner - to try to come up with a solution to help them and us - and to keep it going. We can negotiate.

Cook - should Graber get the first shot with parameters from the ZBA?

Barr - We should interpret the old ordinance, let Graber deal with the homeowner to bring into compliance of what is felt is needed to be.

Cook - in essence we have two parts - we agree they are not in compliant under the old ordinance for the specific section that was requested for interpretation. We also agree to set up parameters for the Zoning Administrator to meet with the homeowner to resolve.

Spencer - Need some time to put together finding of fact

Bucklew- offered to alter deck roughly 10’ to within setback -

Cook - this allows unencumbered beach passage?

Bucklew -Yes

More discussion regarding fact finding ensued - notes were taken as facts were found but none were confirmed by motion or vote.

More discussion about setback requirements, and stair inclusion and deck alteration willingness by Bucklew.

Sumerix requested that the board negotiate with the appellate to negotiate a resolution

Cook - we have looked at the interpretation for the old and reviewed it properly, then moved to the new ordinance and during the dialog a proposal for a solution was presented by the homeowner and accepted by the board - would that cover it? Is this acceptable?

Jakubiak - and not make a decision about which ordinance applies?

Martel cautioned dumping the negotiation solely on the zoning administrator.

Laidlaw stood and stated that the ZBA was now considering a variance, yet no variance request had been made.

Cook - yes, as there is an issue of non-compliance with either version

Barr - asked Cook - Make a motion

Cook motioned to accept the following as facts:

1. The appeal was to consider an interpretation of an amended ordinance. The ZBA members agreed a non-compliance issue resulted from this review.
2. The ZBA members agree a non-compliance issue was identified under the new ordinance.

Barr seconded the motion

Roll call vote was taken all in agreement except Bob Spencer who voted NO

Discussion ensued

Barr reword that they will not encroach setback by more than 25 feet?

No objections

Spencer - I think this should be a finding of fact and not a motion

Barr - if that and not a motion the motion must be withdrawn

Cook - motion withdrawn

Spencer - usually finding of fact is first and individually read and then individually voted on

Cook then read the facts above as facts and asked the zba to accept them as facts.

Spencer said he did not agree with item #3 and should place the responsibility on the homeowner to file a variance to come back before us and another arena of negotiation.

Barr - do we really have to go through another variance?

Cook - I thought you said we could negotiate...do we have to have a variance to bring that forward?

Spencer - let’s not use those terms, let’s say Property owners have until X date to comply with the ordinance requirements and the next step is to say we are receptive with them coming to us to negotiate some other solution. I don’t think people should get a variance from extensive violation of the zoning ordinance and the fact that the zoning administrator never enforced the ZBAs decision.

Graber - read from training materials regarding decisions made by the ZBA in error - Bucklew has a vested right - and thus has a right to depend on the permit and trust it allows him to proceed. He is protected from the permit being revoked once an improvement has been made. He has a vested right for the zoning administrator to be stood behind right or wrong.

Cook added two more findings of facts:

#3 Neighbors of property owner concerns were centered around the availability to walk on the beach in front of the deck without walking in the water.

#4 The property owner is showing a willingness to reduce the westerly end of the deck and the movement of the steps from the westerly edge by not less than X

Cook asked if we could build a motion from that

Spencer - we must discuss each one individually

Bucklew spoke again to state he had a clear vested interest and based on what Deb Graber has stated he should be done with this, but he is willing to work with the board and reduce the deck and address all the concerns.

Graber and Bucklew discussed her questions regarding options and what size the deck and stairs would be - or estimate what might be possible based on cost - and township culpability.

Cook read each finding of fact again.

#1 The appeal was to consider an interpretation of an amended ordinance. The ZBA members agreed a non-compliance issue resulted from this review. - Barr polled zba members individually all stated YES in agreement passes 5/0

#2 The ZBA members agree a non-compliance issue was identified under the new ordinance. Barr polled zba members individually all stated YES in agreement passes 5/0

#3 A concerns was presented by a neighbor centered around the availability to walk on the beach in front of the deck without walking in the water. Barr polled zba members individually all stated YES in agreement passes 5/0

Discussion of OHWM deck dimensions were discussed

#4 The property owner is showing a willingness to reduce size of the deck and shall not encroach upon the 25’ set back from the 50’ set back marker with a limit of a 16’ width deck. Barr polled zba members individually all stated YES in agreement **except Spencer who voted NO.**

**Passes 4/1**

Spencer argued about what the final square footage the deck would be and what it was.

Spencer asked Bucklew for his feeling and commitment and he stated his acquiescence in the above.

Sumerix asked about the possibility of abandoning the original format and negotiate directly with the landowner

Laidlaw - YOU do not have the authority

Barr- We are unable to negotiate a variance without publishing a variance request and change the meeting format

Jakubiak - can we adjourn this until the next meeting and have an application for a variance nade to be heard at the next meeting

Spencer - Of course, It is legal and permissible

Jakubiak - that would address the issue of needing to publish and give notice

Bucklew - willing to revise deck but does not wish to come all the way back

Sumerix - Do we know that Laidlaw’s advice is correct that we cannot change the proceedings of this meeting?

Barr - We can negotiate but we can not switch it to granting a variance due to lack of notice to the public - we would like to but the rules were are under don’t allow it.

Bucklew stated his total agreement

Spencer stated it had nothing to do with him, that it was a zba decision (parameters, time frame etc.)

Barr - can we say…. ZBA states under the old ordinance that the zoning admin will work with the homeowner to be in compliance within the parameters that we set.

Spencer - that is something we can do...yes we can give the zoning admin parameters to reach a settlement.

Summerix - sounds like a wonderful resolution

Spencer - we haven't talked about parameters

Summerix - I believe we have been (motioning to the finding of facts)

Spencer - I want to know what parameters are - bring back a proposal to the next meeting in 30 days, we want report back on the status

Barr - the Zoning administrator is to work with the homeowner to have the deck not exceed 400 square feet and not to encroach into the setback more than 25 feet.

Barr asked Laidlaw if this made sense to him and what he thought

Laidlaw replied that the ZBA could do this and was not exceeding its authority and had not broken any laws

Barr- Homeowner will file variance and it will be heard at next ZBA Meeting May 9, 2018

Spencer proposed another finding of fact: The petitioner has no vested interest in the old ordinance

The group discussed and did not agree with this opinion

Spencer asked again for it to be added to the finding of fact and reread his statement

ZBA members all expressed their disagreement with the statement in its entirety

Spencer made the statement again

Summerix expressed a reluctance in speaking for the homeowner

Spencer stated that this had no effect on anything anyway

Cook it is not our call to make, it is the homeowners

Spencer - it is our call to make

Cook read Spencers proposed finding of fact again

Barr asked for ZBA members to vote and all voted NO no except Spencer

FAILED: ¼

Cook made a motion to adjourn remit the issue to the Zoning Administrator to present a variance at the 5-9-18 meeting with parameters set forth at the 4-11-18 zba meeting

Barr seconded the motion

A roll call vote was taken; all in favor, no opposed

passed 5/0

**8. Martel report -**

**Spencer: Re memo dated 2-6-18 re: Bucklew / Petrillo / Laidlaw -** Spencer read and stated he was not proposing any action

**9. Bretz report - not given**

**10. Zoning Administrator Report**

* Next month appeals (5-9-18)

1. Livingstone - split property and variance on set back
2. Templin property - 46 page appeal received with work going on during his cease and desist

Spencer stated for Deb to issue a Civil Infraction

Deb stated that the ordinance doesn’t specify that she is able to to this

Graber urged ZBA to go see the site but not to speak to the homeowner

Barr has made changes to the rules of procedure for the ZBA and he read the changes which are attached as (ZBA4.11.18P and ZBA4.11.18Q and ZBA4.11.18R)

Barr called for public comment and none was given

Jakubiak made a motion to adjourn the meeting, Cook seconded the motion

Roll call vote, all in favor

passed 5/0