TORCH LAKE TOWNSHIP

ANTRIM COUNTY, MICHIGAN

Community Service Building

Zoning Board Meeting

APPROVED Minutes 4-0

November 13, 2019

**Present:** Chairman: Dave Barr Members: Cole Shoemaker, Bob Cook, Greg Sumerix

**Alternates:**  Jim Meinke, Jim Gainey

**Absent:** Mark Jakubiak

**Others:** Deb Graber - Zoning Administrator

**Recording Secretary:** Jacqueline Petersen

**Audience**: 6

**1. & 2. Call to Order Regular Meeting / Record Members Present:**

Meeting called to order at 7:01 pm by Dave Barr

Roll call conducted by Barr

**3. Approval of Agenda;**

Motion by Cook to approve the agenda; seconded by Shoemaker, Barr called for further discussion and vote; 5/0 motion carried

**4. Approval of last ZBA Draft Meeting Minutes (October 9, 2019)**

Motion by Barr to approve draft meeting minutes from October 9, 2019 ZBA meeting, motion seconded by Cook Barr called for further discussion and vote; 5/0 motion carried

**5. Conflict of interest to agenda items**

Barr polled all ZBA members asking if any conflicts of interest existed and there were none.

**6. Communications Received**

Barr read two emails received;

1. Susan Metz emailed in support of landowners in ZBA Appeal #2019-05
2. Dennis Spillane emailed in support of landowners in ZBA Appeal #2019-05

**7. Public Comment**

Barr called for public comment and none was given

**8. Discussion of Appeal ZBA #2019-05 at 4851 NE Torch Lake Drive, Central Lake, MI Parcel #05-14-775-013-00; requesting a Zoning Ordinance Interpretation**

Barr outlined the appeal and summarized the request of the landowner and the events that have conspired to this point. Barr asked if any township officials had anything to say and none came forward at this time. Bill Derman, Counsel for the landowner spoke and distributed a document prepared by the builder. The document chronicled the fluctuation of the water’s edge in respect to the distance it was at different points of time from the west side of the eaves of the home. Another document he distributed outlined the average vs actual waterfall in the area. He stated his and his client’s intent was not to “get away with” anything. Their position was simply that every measurement has been greater than the 50’ measurement from eave to water’s edge, as the ordinance requires. The measurements are not consistent he stated. 50’ from the water’s edge maintains the spirit of the ordinance, but it does not say “how” or “when” the measurements are to be taken. The ordinance is meant to protect - perhaps an average of measurements taken would suffice due to changes in Torch Lake. Today the measurement is 59’ from the foundation wall but at the time the township official measured, it was documented at 49’ from eave (1-foot encroaching) and now is more than 50’. He went on to say the beaches are lost and the extenuating circumstance in this case is timing and fluctuation. The lot is difficult and his position is that they do not conform. Soil and Erosion allows for rocks to be placed, and if rocks are placed the measurement would be 50’, as only 20’ of the home is affected. (out of setback) He stated he didn’t need an interpretation per se, just clarification about when measurements are judged and from where are they taken? They are trying to be good and responsible stewards of Torch Lake and improve water quality since they purchased the lot. Derman also pointed out that the ordinance allows for an exception to the 50’ set back with an attached unenclosed porch. He stated he could hang his hat (argument) on this, as what is attached to the home here is indeed an unenclosed porch in his mind. (the ordinance does not define “unenclosed porch”. Derman concluded and thanked the ZBA for its time.

Barr stated at the time the Zoning Administrator Graber took the measurements was the “starting bell”. Graber measured 54’ from the foundation to the water’s edge at the time of permit application. VanHouten (builder) stated the measurement was 54’ at the start; 4’ for overhang and 50’ for setback compliance but when Graber was there the water was up and she reported 1’ difference. Graber stated the permit was filed in 2017. VanHouten continued that the measurements taken and everything done, at that point it was easily within the 50’. Graber stated she measured on 4-13-2018. Graber also stated at the time of permit there was no survey, no site plan (drawing only), and the home did not have overhangs. She also stated that throughout the project there were no changes submitted, yet there were changes to the project. Graber stated the permit said the foundation showed right at the 50’ setback and since then the overhang kept going further and further, then the porch was added with extra overhang and when measuring and comparing permit to actual there were differences and the builder never updated the application with the changes. VanHouten stated there was only one (1) change and it was that 1 foot of the overhang in a 20’ section of the overhang only. Graber stated the permit application should be consistent to what is being built.

Barr asked for further comment from Derman or VanHouten. Derman responded we have 50’ and we have fulfilled the ordinance. Barr asked Graber if there were other properties in the district with the same circumstances - Graber described a project on Moulton Road.. Barr stated the purpose of the meeting was for an interpretation ONLY and not a variance request. Barr asked for public comment and none was given. Barr asked Derman for any further comments (none). Barr asked

VanHouten for further comments and he stated the 1’ in question is a section 20’ in length and varying with the water’s edge at that 20’ section only. Derman stated the builder had no idea the township measurements found it encroaching. Barr stated he should have measured before the foundation was in place. VanHouten stated it was indeed measured but with no certainty as the shoreline varies. Barr stated a letter was sent from the township in July of 2018 informing the landowner that the measurement was 49’ and that this had been discussed with VanHouten.

**8A Section 2.16 Paragraph B**

Barr read section 2.16; Paragraph B from the ordinance and asked ZBA members for comment

Cook stated it appears the Zoning Administrator’s actions are consistent to the Ordinance and the question is timing. Since the Zoning Administrator is responsible for taking the measurements and enforcing, he questioned why an interpretation is needed, but the timing started at the time of construction - that’s when the clock started. Then at the end of construction would be another time at which measurements would be taken at which time there was a 1’ encroachment. The Zoning Administrator is responsible to follow up and the builder is responsible to build what is on the permit. The Zoning Administrator has the authorization to measure one time, not multiple times until it complies. There is no reason to measure multiple times from start to finish - it is not specified when to measure, as it is up to the Zoning Administrator. Cook stated in his opinion the ZA measured twice, correctly, and there was a problem. The ZA’s job is to have the authority to enforce, and the role to do measurements and to be consistent. He finds no objection to the procedure or ability and that the ZA was consistent and finds no problem.

Sumerix stated many things can change throughout projects; siding, porches, rooms etc. He stated “as built” drawings aren’t practical, and that moving water lines are a reality. He believes the builder had no ill intent and that there are likely dozens of properties that have become both compliant and non-compliant with this year’s rainfall.

Shoemaker agreed it’s a moving target and asked if Graber measured before or after the foundation. Graber clarified the footings were poured and she measured from the furthest point of protrusion. Meinke said he found no defect in the ZA’s actions and the measurements are what they are and he’s good with this. Barr asked for any further ZBA comments and there were none. Barr asked Derman for questions or comments at this point. Derman stated the Zoning Ordinance is NOT uniformly applied in this township. Meinke asked for an example. Derman stated it is a roll of the dice when the ZA takes the measurements and the day, time of year etc... all have an impact. Meinke stated the clock starts when the ZA takes the measurements and go from there. Barr stated the ZA is consistent in measuring. Derman said the township needs to establish a point in elevation to be consistent. Barr stated that none exists currently, so when the builder starts is when we measure - when the foundation is placed is when a measurement is required. Barr stated that VanHouten admitted he was at 49’ at that time and not in compliance. VanHouten stated that the shoreline is not parallel to the home or foundation and the area in question was not measured - that the north end was measured but the south end was not. He said the ZBA was assuming a parallel relationship and the shoreline is not parallel. Barr called for any further comment and made a motion “Section 2.16 paragraph B has been held consistent with all new construction on Torch Lake and per the Zoning Administrator’s measurement to the foundation on 4-13-19 the roofline extends 1’ into the setback.” the motion was seconded by Cook. Barr asked for further discussion and roll call vote. Barr-Yes, Cook-yes, Shoemaker-yes, Meinke-yes, Sumerix-No. Motion carried 4/1

**8B Section 5.04 Schedule of Regulations**

Barr read from the section from the ordinance and asked for discussion. Barr made a motion “Section 5.04 Schedule of Regulations was interpreted correctly by the Zoning Administrator; motion was seconded by Cook. Barr called for further discussion a roll call vote. Barr-Yes, Cook-yes, Shoemaker-yes, Meinke-yes, Sumerix-No. Motion carried 4/1

**8C Chapter 23; Definitions; Setback, Front lot line yards**

Barr read the definitions into the minutes and confirmed with all ZBA members. The members discussed the need for a definition of “unenclosed porch” to be added to the ordinance. They agreed this porch is a part of the structure (home). Sumerix stated there is a bit of ambiguity however and would like to see the TLT PC clarify this in the ordinance. Cook made the following motion. “The interpretation of ‘setback’ and ‘lot line’ on page 23.19 was appropriately interpreted as well as the interpretation of ‘front yard line’ on page 23.25.” Motion was seconded by Barr. Barr called for further discussion and roll call vote. Barr-Yes, Cook-yes, Shoemaker-yes, Meinke-yes, Sumerix-No. Motion carried 4/1. Barr asked Derman for further comment and there was none. Barr informed Derman that a follow up letter of the decision would be mailed.

**9. Establish scheduled dates for regular ZBA meetings in 2020**

Cook made a motion to accept the dates for 2020 as written by Barr; Barr seconded the motion, called for further discussion and vote 5/0; motion carried.

**10. Election of officers for 2020 (Chair, vice chair and secretary)**

Cook nominated Barr as ZBA Chairperson; Meinke seconded, Cook called for discussion and vote 5/0 motion carried. Barr nominated Meinke as Vice Chair, Cook seconded, Barr called for discussion and vote; 5/0 motion carried. Cook nominated Barr as ZBA secretary, seconded by Meinke, Barr called for discussion and vote; 5/0 motion carried.

**11. Report from PC/ZBA Liaison Cole Shoemaker**

Shoemaker summarized the activities of the PC - the new officers were elected.

**12. Report from the Zoning Administrator**

Graber distributed an updated *Checklist for October 2019* and TLT 2019 Land Use Permits spreadsheet through Permit #2019-52, Land Division App # LDA2019-3 and ZBA Appeals ZBA 2019-5. Violations, civil infractions, enforcement, court cases, pending court cases, complaints, on-going permit status, and current zoning applications were summarized.

**13. Summary of action items to be taken on or before the next ZBA meeting**

Next meeting 12-13-19 will be a short meeting to approve draft meeting minutes

UTLA dinner is 12-9-19; bring appetizer and own beverage

Barr will send letter to Derman / landowner regarding tonight’s proceedings

Barr will send request to TLT PC regarding tonight’s proceedings

**14. Comments/Concerns of the public**

Barr called for comments from the public and there were none.

**15. Adjournment**

With nothing further, a motion was made by Cook to adjourn, the motion was seconded by Shoemaker, Barr called for further comment and vote; passing 5/0. The meeting was adjourned at 8:45 pm