TORCH LAKE TOWNSHIP

ANTRIM COUNTY, MICHIGAN

Community Service Building

Zoning Board Meeting

APPROVED Minutes 5-0

October 14, 2020

**Present:** Chairman: Dave Barr Members: Cole Shoemaker, Mark Jakubiak, Bob Cook

**Alternates:**  Jim Meinke (for Sumerix) Jim Gainey

**Absent:** Greg Sumerix

**Others:** Deb Graber - Zoning Administrator

**Recording Secretary:** Jacqueline Petersen

**Audience**: 10

**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. Meinke in for Sumerix

**3. Approval of Agenda**

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

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

Shoemaker stated he owns adjoining property to the appellants and recused himself from the appeal, Jim Gainey stood in. Barr polled ZBA members asking if any further conflicts of interest existed and there were none.

**5. Summarization of the procedure and rules**

Barr summarized the rules and procedures of the appeal for variance

**6. Open Public Hearing for Appeal ZBA 2020-4 Vohs**

1. **Variance of section 2.19 - Use of recreational vehicles as temporary swellings. A one (1)time occupancy of no more than thirty (30) days per year may be permitted for a recreational vehicle if it is self-contained and contains a sanitary system approved by the District Health Department 3. The applicants are requesting the 30 day per year one-time use be adjusted to allow use without a 30 day restriction.** Barr summarized the application and referenced Ordinance 2.19.
2. Barr read aloud correspondences received
3. Zarczynski 616 S. Golden Beach wrote NOT in support of granting the variance
4. Jim King (neighbor to property) called to voice his support of granting the variance

Barr asked the applicant “ Kenneth Vohs'' to present his case. Vohs summarized his need for variance. He stated his camper has all sanitary requirements. Has used camper there for 7 years without complaint. He stated there is another camper on CRESWELL road which is there year round - visible to all who drive past and it remains there for the landowner’s use and this is unfair. Vohs stated he was told by his realtor, Don Fedrigon, when he bought the property (and in fact, was the reason he bought the property) that camping was permitted because his property was zoned “Timber Reserve.” He went on to say Fedrigon pointed out another vacant lot that Vohs decided not to buy because Fedrigon informed him camping was not allowed on that parcel because it was not “Timber Reserve.” Vohs stated the camper is not visible from any public road and where it sits, no one has reason to come back there. He states it is visible only to one neighbor (Jim King) who contacted the township in support of granting the variance. Vohs stated he only uses the camper occasionally and only in the summer months. He said it is unfair that all of a sudden, after 7 years of using property in this manner, and at the knowledge of prior zoning administrators, that he is being forced to stop. Jakubiak asked if he had received any written permission from any township official. Vohs stated he did not. Jakubiak stated that Vohs problem then was with what Don Fedrigon had told him. Vohs stated he has complied with the township in permitting the improvements he has made and allowing him to continue camping there would not set precedence, as future requests would all have to be judged on their own merit. He is 700ft off nearest public road on a deadend private road. Jakubiak asked if he has plans to build. Vohs stated he didn’t know but planned to keep it 2-3 more years with the CAMPER due to his age and if variance was granted, it would not go with the property if it was sold, that he would only use it for camping while he owned the property. Barr corrected Vohs stating that variances granted went with the property in perpetuity. Meinke asked if the camper on CRESWELL was occupied. Vohs stated it was for a week or so at a time, in the same manner as he was using his. Vohs stated he did not store his trailer on the property and his longest stay was 2 consecutive weeks. Graber stated that the camper on CRESWELL has existed before zoning and thus is grandfathered in with a letter from the township. She stated they use it 1x per year for family reunions and have done so since 1970. Vohs stated his septage is 100% contained and taken to Barnes Park for disposal and has never and will never be dumped on the property. Barr asked if there were any other comments from the public. Mike Atkins 650 Tamarack (neighbor to applicant) spoke in favor of allowing Vohs to continue. He stated Vohs would not turn the property into an RV park and he is only there in the summer months. He also stated the camper is not visible from the road or his own property. Atkins has no issues or concerns with Vohs and thinks the variance should be granted. His only concern is in the long term, if precedence is set, that the other 4 vacant lots in the subdivision may wish to do the same. He asked how the board could assure no future campground happening. Graber stated she will enforce the ordinance as written unless the variance is granted, and it will remain as it is today She is here to enforce no camping on vacant land, unless grandfathered in prior to zoning. Atkins clarified that the granting of the variance would be parcel specific and if other lots wanted to do the same they would also have to seek variance.

Tom Stillings - Golden Beach Drive property owner spoke. He stated the CRESWELL trailer predates the zoning ordinance. He is unable to judge if he is for or against granting the variance because he is unclear how Vohs handles his septage. He visited the site and saw a site plan with a drain field proposed away from the creek. He asked when the drain field and sewage system will be put in. He stated once he knows the status he will decide if he objects or not. Barr called for further public comment and none was given. Barr called for further comment from Vohs. Vohs reiterated his handling of septage and stated at this time there was no plan to install a drain field or sewage system. He stated the Health Department has approved the site for placement, but work is not planned. He stated again that no sewage is dumped on the property. Graber summarized the origin of the issue stating she was at the neighbor’s (King) home when she observed Vohs camping in his trailer. She stated she approached Vohs and he has been friendly and cooperative and stated he had been camping there a number of years without incident. Barr called for final comments and there were none. Barr made a motion to close the public hearing and go into deliberations, motion was seconded by Cook. Barr called for final comments and roll call vote 5/0. Motion carried. Barr asked Vohs if he had anything in writing from Fedrigon and Vohs said he did not, and that he trusted him to be a licenced professional and know what he is talking about. Cook stated his concern was to find an exception, for “special characteristics” of this property to distinguish it from other properties. He is concerned with precedence. He asked, are there enough characteristics to make a decision to set parameters for future requests? Barr stated that even though other properties will have to come before the ZBA on their own, the ZBA will have indeed set precedence if approved. Plus if sold, 10 years from now new owners would and could set up camp and he urged the board to be very careful in its decision. Jakubiak stated the ordinance is very clear about no camping beyond 30 days and while he is sympathetic, sitting on the ZBA, he knows this will set precedence and be very difficult to defend future requestors, and that in order to maintain continuity, the ordinance must be followed to the letter. Gainey asked for clarification if the 30 days allowed had to be consecutive. Graber read from the ordinance that it is a “One time occupancy for 30 days per year.” The board agreed that it is understood that this means 30 consecutive days. Cook asked Vohs to consider going to the Planning Commission instead of having his variance heard tonight. He explained that the applicants could approach the Planning Commission, explain their situation, have a public hearing, and request that the ordinance be rewritten, with their circumstances outlined (Timber Reserve and 2 Acres) and petition the Planning Commission to consider allow making a permanent change to the ordinance. Cook stated that then, if the Planning Commission decided not to revise the ordinance, the Vohs’ could then have their request for variance heard by the ZBA. Barr asked Vohs if he would like to postpone tonight's appeal and go to the Planning Commission. Cook stated he was suggesting it as an alternative, and an opportunity to set aside a few months, and reminded Vohs that the ZBA decision is final. Barr stated he would ask the Planning Commission to take no longer than 6 months. Barr polled the members and asked if they were ok offering Vohs to go to the Planning Commission. All said yes except Meinke who stated the Planning Commission wrote the zoning ordinance for 30 days, and must have had a reason, he sympathizes with Vohs but stated the ordinance is very clear. Barr asked Vohs if he had any interest in pursuing with the Planning Commission. Vohs stated that even if the 30 days were not consecutive, that didn’t help him. To him it would have no value and would not be worth it to him. Cook stated going to the Planning Commission was an opportunity to even ask for 120 days and let them decide for the whole community, a chance to discuss and have a public hearing. Graber stated that his property being zoned Timber Reserve might be criteria for the change. There are only a few small parcels in the township designated to Timber Reserve and Vohs could petition the Planning Commission to allow camping for more than 30 days on Timber Reserve properties. Barr asked Vohs for a decision if he would consider putting his appeal on hold for 6 months and go to the Planning Commission to seek a change in zoning. Vohs stated he only planned to use the property for another 2-3 years and it was not worth it to him. Vohs reiterated that his parcel is over 2 acres and in Timber Reserve and camping on his parcel in no way deteriorates property values. He stated the camper on CRESSWELL did not deteriorate property values, and neither would his. He reminded the ZBA that there have been no issues in 7 years and this is the first and only request ever in the township for this permission. He also stated he would never have bought the property from Fedrigon had he known, nor would he have been comfortable utilizing it for all these years in this manner had he known it was not allowed. Vohs stated that Fedrigon is a LICENSED professional and a person of authority, just as the township officials are, and he had no reason to doubt or double check what he was told. He stated he is incredibly disappointed that this has happened. Graber stated she called Fedrigon and asked him to tell potential buyers of vacant land in Torch Lake Township to visit the township before purchasing to be sure they are aware of what they can and can’t do and or familiarize himself with the ordinance. Barr stated it was very unfortunate that Fedrigon gave Vohs bad information. Barr asked Vohs again for a decision about going to the Planning Commission. Vohs said it is not worth it and if the variance cannot be granted, he would sell the property. Mike Akins asked the ZBA to consider granting the variance with conditions. Barr clarified Voh’s decision to proceed. Vohs stated again to proceed.

Finding of Facts

1. The property purchased was based on an opinion of a real estate agent that they could place a trailer on it. Motion to accept as finding of fact by Cook; Seconded by Barr. Barr called for discussion and conducted a roll call vote; passing 5/0
2. The property has been utilized in the same manner for seven (7) years without complaint.

Motion to accept as finding of fact by Cook; Seconded by Barr. Barr called for discussion and conducted a roll call vote; passing 5/0

1. Sewage is handled through a containment system and is disposed of at Barnes Park.

Motion to accept as finding of fact by Cook; Seconded by Barr. Barr called for discussion and conducted a roll call vote; passing 5/0

1. All permits have been received for erosion, well and electric.

Motion to accept as finding of fact by Barr; Seconded by Cook. Barr called for discussion and conducted a roll call vote; passing 5/0

1. Zoning Ordinance 2.19 exists in Torch Lake Township

Motion to accept as finding of fact by Barr; Seconded by Meinke. Barr called for discussion and conducted a roll call vote; passing 5/0

1. Property is in a Timber Reserve

Motion to accept as finding of fact by Jakubiak; Seconded by Cook. Barr called for discussion and conducted a roll call vote; passing 5/0

1. Property size is 2 acres

Motion to accept as finding of fact by Cook; Seconded by Barr. Barr called for discussion and conducted a roll call vote; passing 4/1 (Meinke= NO).

1. Applicant (Vohs) did not wish to present his request to the Planning Commission for a change to the ordinance.

Motion to accept as finding of fact by Cook; Seconded by Barr. Barr called for discussion and conducted a roll call vote; passing 5/0

Barr called for more findings of fact and there were none. Motion by Cook to come out of closed session to open session. Gainey seconded the motion. Barr called for further discussion and roll call vote passing 5/0. Barr called for any further comments before going on to determine criteria. Vohs reiterated all he had said earlier. Atkins reiterated all he had said earlier. Barr explained the 4 criteria required for granting the variance, explaining that if any one of the four were not met the variance would be denied.

Barr read from Section 20.06

1. That special conditions or circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to most other lands, structures or buildings in the same zoning district. The members discussed and a roll call vote was conducted by Barr (No vote = criteria not met)

All members voted NO

Barr continued

1. That literal interpretation of the provisions of this Zoning Ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same zoning district. The members discussed and a roll call vote was conducted by Barr (No vote = criteria not met)

All members voted NO

Barr continued

1. That the special conditions or circumstances do not result from the actions of the applicant.The members discussed and a roll call vote was conducted by Barr (No vote = criteria not met)

4 NO, 1 YES

Barr continued

1. That the authorizing of the variance will not be of substantial detriment to the neighboring property and will not be contrary to the spirit and purpose of this Zoning Ordinance. The members discussed and a roll call vote was conducted by Barr (No vote = criteria not met)

All members voted NO

Barr summarized and made a motion to deny variance request ZBA 2020-4; motion was seconded by Jakubiak. Barr called for final comments and roll call vote; 5/0.

Barr thanked the Vohs for their time and expressed his condolences of their circumstance. He informed them they would receive a letter from the township with the results of the hearing.

**9. Approval of last ZBA Draft Minutes (August 12, 2020)**

Changes:

1. Item #4 Jakubiak made a motion - add the following: Motion was to NOT accept the additional information that came in late. Motion was seconded by Barr. BARR conducted a roll call vote 5/0 Motion carried.

2. Item #6 After “Cook stated he believed a postponement was requested.” Add the following: Shoemaker stated he did not remember.

3. Itm #6 Correct “Barr read letter from TLT ZBA to Barr” to “Barr read letter from TLT ZBA to Spencer.”

4. Item #3 Correct typo to “5/0 motion carried”

5. Item #7A strike the sentence “He stated the ZBA makes zoning and the PC can accept or review.

6. #7A Correct typo in sentence “Millar, Martel and the ZBA concluded the ZBA had not …” (remove word “and” between the words ZBA and concluded.

Motion by Barr to approve draft meeting minutes from the August 12, 2020 ZBA meeting with 6 changes, motion seconded by Cook. Barr called for further discussion and vote; 5/0 motion carried.

**10. Communications Received (not pertaining to current variance request)**

Barr stated none had been received.

**11. Public Comment not pertaining to current variance request)**

Barr called for public comment and none was given

**12. Report from Planning Commission - Cole Shoemaker**

Shoemaker summarized the events of the Planning Commission meeting on October 13 , 2020. Public hearing will be scheduled in regards to updating the fencing ordinance conflict & the issue with the interpretation regarding non conforming property variances to clarify the Zoning Administrator's authority.

**13. Zoning Administrator’s Report**

Graber distributed an updated *Checklist for September* and TLT 2020 Land Use Permits spreadsheet through Permit #2020-53, and ZBA Appeals ZBA 2020-4 on-going permit status, and current zoning applications were summarized as well. Lots of activity; permits, home sales etc. The board has received 2 applications for planning consultants. There is an appeal for variance scheduled next month for parcel on Michigan Trail and Neoma. Please visit site. Park on Michigan Trail and walk back, there is a marking steak off Neoma. North of TLT village the pallet fenced yard will be removing the pallet fencing. When the neighbor next door moved a trailer he exposed the pallet fenced yard had marijuana growing. She informed the occupants, who are renters, any fencing citation would result in the owner being ticketed, not the renter. The occupants told Graber they would remove the fence. Graber visited Templin who instructed her she is not allowed on his property until his deadline to comply (11-15-20) but Ellison Excavating informed her that the “wings” had been removed. Graber stated one wing was dismantled and the other, although removed, remained on the ground intact. Graber also reported the road on the south side is washing out and she suggested to Templin to look into Manthei cement’s concrete forms that stack and are not attached to each other. Graber stated TEMPLIN is losing shoreline and may end up losing the wall to which the wings were attached. Graber is also working to remedy the blight issues, and a couple Short Term Rental violation in August and September including a property owned by Jim Hettinger, who claims it has been in a rental program and should be grandfathered. Deb requested proof from Hettinger (whose atty stated this request was reasonable) but this has not been received.

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

Next meeting is November 11, 2020 - please visit site of appeal ZBA 2020-5

Barr asked all members to please let him know if they would be unable to attend. Shoemaker and Jakubiak may have conflicts and GAINEY and Meinke will sit in.

Barr will ask Sumerix for his intention having missed several meetings or for his resignation.

The board discussed who the future members would be as Cook will be supervisor and leaving the zoning board. Barr suggested bringing Steve Langworthy back to help educate the new board.

The 2021 Meeting schedule will be set at the next meeting as well as election of officers and organizational meeting. Barr and Cook made a plan to get answer from Sumerix and resolve. Barr explained that if only 3 members were present at the next appeal, that the appeal would have to be passed unanimously to be granted.

Graber stated that the ruling for Jim King will have to be re-approved by the board, as it was not posted in the paper on time and contained incorrect dates. Marsha Petersen (from audience) asked the ZBA why the decision was not posted in the paper on time and why it contained wrong information. Graber referred her to ask Windiate (clerk) at the next board meeting October 20, 2020. Petersen stated she would do this and that this type of omission/error has been happening too frequently.

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

Barr called for comments from the public.

Tom Petersen spoke and stated the township seems to have too many regulations. He also stated there is a need to review and simplify the ordinance. He stated his opinion that simpler is better and not going overboard is better. He asked what the procedure is to fill ZBA vacancies. Cook stated Martel uses his rolodex. Petersen stated diversity (like a farmer) on the board and planning commission would be better than Alan Martel choosing everyone and coaching them to do what he wants - especially the PC. He stated Martel is not publishing the vacancies and there might be interest in the community - the way Alan Martel does things is not always the correct way. The ZBA clarified that all ZBA members appointed had to submit a resume. Cook stated he got involved in the township due to a letter received in his tax bill, which will happen again this year. He is unsure about posting the positions in the paper due to needing to live in the township. Gainey stated his involvement started when he was asked to be on special committees. Barr explained why ZBA needs 5 members year round. Cook stated population goes down by 65% in the winter months.

Barr asked for further public comment and none was given.

**16. Adjournment**

With nothing further, a motion was made by Barr to adjourn, the motion was seconded by Gainey, Barr called for further comment and vote; passing 5/0. The meeting was adjourned at 9:00 pm