TORCH LAKE TOWNSHIP

ANTRIM COUNTY

Community Services Building

Zoning Board Meeting

 APPROVED 5-0

May 12, 2021

1. **Meeting called to order** by Dave Barr at 7:02 PM

2. **Members Present:** Chairman: Dave Barr, Members: Jim Gainey, Jim Meinke, Mark JAKUBIAK, Cole Shoemaker. **Alternates:** Marsha Petersen, Laura ANDERSEN, PLANNER/ZONING ADMINISTRATOR S. Kopriva, **Assistant Zoning Administrator** Jackie Petersen

3. **Approval of Agenda:** Motion to Approve as presented by M. JAKUBIAK, seconded by J. Meinke

4. **Conflicts of Interest to Agenda Items:** Chairman D. Barr polled members and found none.

5. **Summarization of Procedures and Rules** reviewed to audience by Dave Barr

6. **Open Public Hearing for appeal ZBA 2021-03 Grace**

6A. **Variance on parcel #05-14-312-018-00**, located as 12231 Barnes Park Rd, Central Lake, Michigan. Property owner seeking a side yard setback variance of 2 feet for a 13’X24’ accessory structure. Ms. Grace at 12311 Barnes Rd. 3 years ago she had a 300 sq. ft. prebuilt shed placed at the best place for practicality and aesthetic. She personally had no awareness of permits and zoning issues. No neighbor issued complaints nor did the Township until a complaint was filed with Antrim County. Ms. Grace understands zoning is to protect neighbors and property values. Dave Barr inquired who placed shed? Answer: prior owner (ex-husband). It was her ex-husband that wrote original letter naming variance violation. It was not until TLT Zoning Administrator came out before discovering the variance violation with TLT Zoning .

6B. **Correspondence** –None

6C. **Public Comment** – None

D. Barr made motion to go into closed session. J. Gainey seconded. No further discussion. Roll Call Vote D. Barr – yes, J. Gainey – yes, C. Shoemaker – yes, M. JAKUBIAK – yes, J. Meinke – yes. Motion passed 5-0.

7. **Close Public Hearing for ZBA 2021-03**. C. Shoemaker asks if there had BEEN A citation sent? Citation letter sent by Zoning Administrator D. Graber on 2.26.21. D. Graber had received complaint which prompted citation. Ms. Grace states it was brought to attention by herself when she noted a red tag on shed. She called Township and spoke with D. Graber. Complaint originally went to County. J. Meinke asks nature of transfer of deed in divorce. Owner states QUIT CLAIM. M. JAKUBIAK asks if realtor was used in transfer of title, title insurance and if originally on property? MS. GRACE RESPONSE WAS Placed by Ms. Grace and her then husband. D. Barr asks if she is aware of drain field. She refers committee to paperwork which shows septic field and she states the drain field is in back yard. Ms. Grace asks if anyone on committee has been out to property? Yes, entire committee per D. Barr. D. Barr asks if committee can get copy of letter read. Copies provided by J. Petersen.

**Finding of Facts:**

1. Motion for Finding of fact Shed was placed without permits by D. Barr/Seconded by M. JAKUBIAK. No Discussion. Roll Call Vote: D. Barr-yes, J. Gainey-yes, C. Shoemaker-yes, M. JAKUBIAK-yes, J. Meinke-yes. Passed 5-0

2. D. Barr motions that shed is hardwired for electricity/J. Meinke seconds. Discussion: J. Meinke questions if there is propane going to it? Is there light inside? Yes, per owner. Roll Call Vote: D. Barr-yes, J. Gainey-yes, C. Shoemaker-yes, M. JAKUBIAK-yes, J. Meinke-yes. Passed 5-0

J. Meinke moves that the building is 2ft into the setback in violation of 10.05D. D. Barr seconds. No Discussion. Roll Call Vote: D. Barr-yes, J. Gainey-yes, C. Shoemaker-yes, M. JAKUBIAK-yes, J. Meinke-yes. Passed 5-0

D. Barr motion that moving shed would be cost prohibited to owner. C. Shoemaker seconds. Discussion: C. Shoemaker asks if there is any cost to moving? Owner said there would be a need for a “mule” which costs $1000 plus cost of electricity to redo entire line. Owner states full of woodworking equipment and would be labor intensive. Roll Call Vote: D. Barr-no, J. Gainey-no, C. Shoemaker-no, M. JAKUBIAK-no, J. Meinke-no. FAILED 0-5

J. Meinke motions it appears there is enough room behind the existing garage to place the existing shed without incurring any problems to the draining field and septic. D. Barr seconded. J. Gainey states what does that matter if committee didn’t feel it was cost prohibitive. J. Meinke states one of complaints is that there is no place to move on her property and he is pointing out a potential. C. Shoemaker states that we do not know this for fact. J. Meinke refers all to review paperwork that appears to show that there would be room behind existing garage. D. Barr asks if Ms. Grace knows if the shed is over septic. Ms. Grace stated it does not and spoke to financial cost and states this would be a financial burden to herself. D. Barr explains this has been determined to have no bearing by roll call vote.

Roll Call Vote: D. Barr-yes, J. Gainey –yes, J. Meinke-yes, M. JAKUBIAK -yes, C. Shoemaker-yes. Passed 5-0.

J. Meinke moves that committee accepts the facts as they have been stated. Seconded by D. Barr.

Roll Call Vote: D. Barr-yes, J. Gainey-yes, J. Meinke-yes, M. JAKUBIAK-yes, C. Shoemaker-yes. Passed 5-0

D. Barr moves that conversation be moved to OPEN THE PUBLIC HEARING. J. Meinke seconds. No discussion

Roll Call Vote: D. Barr-yes, J. Gainey-yes, J. Meinke-yes, M. JAKUBIAK-yes, C. Shoemaker-yes. Passed 5-0.

Public Comment: Casey Wiggins, disinterested party that poses one, who would be disenfranchised by this variance? Would anyone be inconvenienced? Where complaint came from is questionable as to bearing. Doesn’t change violation. How that is treated is up to committee. Has had issues from assuming parent’s property and navigated with neighbors to come to agreement.

D. Barr speaks to who made complaint has no bearing on anything. They must look to 4 criteria.

20.06 Dimensional Variances. No dimensional variances from the provisions or requirements of this zoning ordinance shall be authorized by the ZBA unless the ZBA makes finding of facts . Status is all of the following based upon competent material substantial evidence on the whole record. 20.06A The special conditions of circumstances exist which are peculiar to the land, structure or building involved which are not equitable to most other land structures in the same zoning district. J. Meinke moves that there are no special circumstances or conditions which exist that are covered by 20.06A. Seconded by M. JAKUBIAK. C. Shoemaker comments that this does get confusing with wording in regards to voting. Suggestion to rewording taken into consideration but kept consistent with prior practice. No further discussion. Roll Call Vote: D. Barr-yes, J. Gainey-yes, J. Meinke-yes, M. JAKUBIAK-yes, C. Shoemaker-yes. Passed 5-0. 20.06A Fails.

20.06B Literal interpretation of provisions of this zoning ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same zoning district. J. Meinke moves there are no Literal interpretation of provisions of this zoning ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same zoning district. J. Gainey seconds. J. Meinke spoke to placement of shed.

Roll Call Vote: D. Barr-yes, J. Gainey-yes, J. Meinke-yes, M. JAKUBIAK-yes, C. Shoemaker-yes. Passed 5-0. 20.06B Fails.

20.06C That the special conditions or circumstances do not result from the actions of the applicant. M. JAKUBIAK moves that the special condition of circumstances do result from the actions of the applicant in that she was married at the time of the owner of the property with her ex-husband as such. J. Meinke seconds. No Discussion.

Roll Call Vote: D. Barr-yes, J. Gainey-yes, J. Meinke-yes, M. JAKUBIAK-yes, C. Shoemaker-no. Passed 4-1. 20.06C Fails.

20.06D The authorizing of the variance will not be of substantial detriment to the neighbor property and will not be contrary to the spirit and purpose of this zoning ordinance. J. Meinke moves that authorizing the variance would be contrary to the spirit and purpose of the zoning ordinance. M. JAKUBIAK seconds. Discussion. D. Barr said it probably isn’t detriment to the neighboring but is contrary to the spirit of the zoning ordinance. Roll Call Vote: D. Barr-yes, J. Gainey-yes, J. Meinke-yes, M. JAKUBIAK-yes, C. Shoemaker-yes. Passed 5-0. 20.06D Fails.

Motion to accept or deny variance: D. Barr motions #2021-03 has not met the four (4) criteria in Chapter 20, sections 20.06A, B, C and D and the variance request is denied. J. Gainey seconded. Roll Call Vote: D. Barr-yes, J. Gainey-yes, J. Meinke-yes, M. JAKUBIAK-yes, C. Shoemaker-yes. Passed 5-0. Variance Request Denied.

D. Barr thanks Ms. Grace for her time and states she will be receiving their determination by mail. Ms. Grace asks if a variance impacts the future, why can’t she be given a “hall pass” and in the future if any one complains she will pay for it to be moved. J. Meinke states that someone already complained to the County which resulted in it coming to township awareness. Ms. Grace states that no one complained with placement but complained that there was no permit. J. Gainey explained that when the County receives a complaint and it is passed on ZBA must address. J. Gainey asks when shed was placed. 3 years ago per owner. D. Barr states they have four (4) criteria to investigate. Ms. Grace further explained her position that this shed does not cause any safety to others and will not impact health of anyone. Ms. Grace argues who made these ordinances that are wordy verbage that are all of Committee opinions. Committee states the Township and Planning Commission provide these guidelines. She is welcome to go to the PC and Township to get Ordinance changed and appeal. Owner states this is a hardship.

BREAK – MEETING RESUMED AT 8:05

9. **Open Public Hearing for Appeal ZBA 2021-04 Baruzzini**

A. Variance on parcel #05-14-475-002-00, from Nick Palizzi, Architect on behalf of Don Baruzzini, 257 NW Torch Lake Dr., Kewadin, MI. Owners requesting interpretation and appeal regarding Front Yard Setbacks.

B. No Communications Received

C. No Public Comment nor Township Official comment

10**. Close Public Hearing of 2021-04.**

11. **Discussion of Variance Appeal 2021.04 Baruzzini** - Nick Palizzi, architect is representing owners and owner’s present. States in their opinion they are not asking for a variance but rather an interpretation of a code. In 1988 the Zoning Administrator thought she could after the fact permit. An assumption was believed that the house was built first with deck being add on later; which is not accurate as they were both constructed at the same time. To their knowledge all was addressed and in compliance. Sections on the permits 19.03 and 19.02 Zoning Permit Required speaks to obtaining a permit. 19.02 stating when you need to get a permit which states you can’t build anything or relocate anything. These did not apply. 19.03 spells how to get the permit. The reason they did not get permit is because they were doing maintenance on the existing deck. While doing this maintenance work of a 20-year-old deck, they decided to fix a poor design, no structural changes were done but they did take out a hazard to the deck design. There is a 5” step that went across deck which caused an unsafe design. This was the only change being made. Section 2.01 which states if you build something you have to meet the Zoning district where you reside. Section 2.16 General Lot and Yard area requirements for all Zone Districts. This says it has to be unobstructed from ground to sky excluding open decks. Decks and porches don’t count as they are not enclosed and was stated to Mr. Baruzzini. When looking at the current ordinance, N. Palizzi states that these discrepancies have been addressed and corrected. They are requesting that they be allowed to replace deck. D. Barr asks Mr. Palizzi who was the zoning administrator at that time? Tom Echelberg according to Mr. Baruzzini. M. JAKUBIAK asks for clarification of “carpenter guy” referenced on affidavit as a witness. The actual name is Dan Newton. C. Shoemaker asks for clarification of picture that was referenced in opening statements. Mr. Palizzi states that in reviewing with Zoning Administrator, he referenced picture that shows the date on the back of the picture to show entire structure in 2016. Original photo was sent to Zoning Administrator. Original plans presented to show design with deck and porches. S. Kopriva speaks to only having D. Graber’s notes of investigation. Based on these notes; she defined “front yard” and how that pertains to setback. There is no mention of the deck on the original permit. Had it been on a permit, maintenance would have been reasonable. In changing the deck hazard; as it was not noted on original permit it is a structural change. S. Kopriva encourages that the Committee request the copies of the original documents that they have from original permit. The Township does not have these on file. D. Barr requests for insight into the interpretation of the Ordinance from S. Kopriva. She said to look at the ordinance, the section and the ordinance as a whole. Committee is interpreting language of the ordinance while using definitions from the ordinance and dictionary. Dependent on interpretation and zoning appeal, essentially looking at Zoning Administrator D. Graber decision to obtain permit and essentially owners are in violation of the Ordinance in accordance to set back should the Committee agree with this decision. J. Meinke asks if these are two separate issues; A, do they need a permit and B, are they in the setback. S. Kopriva agrees with this approach. D. Barr asks Mr. Palizzi if he has permit of original deck, which they do not. Mr. Palizzi asks if we have any drawings or plans from original filing? No according to S. Kopriva. D. Graber sent a copy of drawing from township zoning officer which clearly shows the deck. S. Kopriva states that based on digital drawing aspect, she does not believe this was done at that time but rather done subsequently by another entity.

D. Barr states that owners are reconstructing one aspect and altering deck while also completing maintenance on the rest. N. Palizzi does not agree but states if ZBA states a permit is needed; he will advise them to obtain. He states he feels the committee should take the first three facts be taken as one and the last separate. Sara Kopriva states the supporting posts are new as well as the joists. Owner and N. Palizzi explained that the posts were replaced and not new posts. The joists are also being replaced. Explanation went further into where the project was at when it was stopped. They are appealing the Zoning Administrator decision that the owners did not meet the 1998 ordinances of the front yard setback. Further they are arguing that the Zoning Administrator’s instruction that the deck and porch structures would need to be completely removed is unreasonable as it is an integral part to the home. They have provided sufficient evidence to show that Zoning Ordinance had an exception to the definition of the Front Yard Setback for Unenclosed porches. D. Barr read from Deb Graber’s violation letter to owners which is the base of what the committee needs to be considering tonight. The home owners are appealing the Zoning Administrator’s decision regarding this Front Yard Setback; not an interpretation. D. Barr asks if parts of the deck been reconstructed? Yes, and in compliance per architect. Has it been altered? They would like to if allowed per architect. However, based on 2.0 it is in compliance of the 1998 zoning ordinance. S. Kopriva believes Mr. Palizzi’s comments regarding the compliance of the 1998 ordinance is correct but this process needs to look at the Ordinance of today. In looking at today, it has had maintenance changes and there have been more than just changing a few top boards. J. Gainey asks if parts of the deck have been removed? Discussion regarding what to date work has been completed. Were they in process of raising deck, the stringers in front of deck? J. Meinke asks to speak with N. Palizzi and asks him to explain what has been changed. Mr. Baruzzini explained that the anchors failed and had to be replaced which prompted him to utilize new products that would eliminate hazard as well. D. Barr Motion that Chapter 2 section 2.01 was properly interpreted by the Zoning Administrator of that time. J. Meinke seconded. Discussion: J. Meinke asks of changing of step. D. Barr states refers to alterations and reconstruction. Mr. Palizzi asks if owners were just replacing deck boards would they still say Z. Administrated properly interpreted in regards to letter sent to owners? D. Barr reviews work that has been completed and changes to step. Mr. Palizzi asks for definition of “non-conforming”. J. Meinke states it was not conforming when it was built before Zoning came into effect. Sara Kopriva states that Non-conforming section comes in when it was built prior to zoning or the zoning has changed which make it not non-conforming. The legal part comes in when it was actually built before zoning or was at one time legal to conformance. It cannot, not be non-conforming unless at one time it was allowed. Mr. Palizzi states paperwork was submitted as directed by the Zoning Administrator. D. Barr explains that ZBA is charged with looking at the interpretation of the ZA decision to 5 items noted. Mr. Palizzi adds an appeal decision to address the 5 points submitted. Mr. Palizzi frustration is that they are trying to just get to point to finish deck as they explained to ZA. S. Kopriva states that section 2.0 doesn’t really state what owner’s need to do but rather just states it needs to be conforming. Mr. Palizzi states further complicated by did it once comply versus does it still today?

D. Barr Motion that Chapter 2 section 2.01 was properly interpreted by the Zoning Administrator. J. Meinke seconded. ROLL CALL VOTE:

D. Barr-yes, J. Gainey-yes, J. Meinke-yes, M. JAKUBIAK-yes, C. Shoemaker-yes. Passed 5-0.

D. Barr, Chapter 2, Section 2.16 – General Lot and Yard Area Requirements for all Zone Districts, Item 8. D. Barr questions “unobstructed by structure.” C. Shoemaker asks for reference to 1998 information which D. Barr directed to in packet. S. Kopriva states there is no definition of structure in 1998. Need to look to common definition of structure. This is different from “building.” Structure is than defined as a combination of materials. S. Kopriva speaks to definition of front yard and ask yourself what is the front structure. She explains how calculation is determined. What can be placed in this area states nothing from ground to sky. D. Barr repeats that question is did Zoning Administrator interpret properly the way it is written. J. Meinke states this is vague and does not understand why it is included as it does not state anything that is in violation. D. Barr asks Mr. Palizzi for comments regarding appeal to Chapter 23. Mr. Palizzi states it’s hard to take just a section of the ordinance without looking at the ordinance. The definition as it states in their thoughts is that decks did not count at that time.

D. Barr Motion that the Zoning Administrator properly interpreted Chapter 2, Section 2.16 – General Lot and Yard Area Requirements for all Zone Districts, Item B. C. Shoemaker seconded. Discussion: C. Shoemaker has trouble putting in context to how it relates in what they are asking owners to do as a violation. D. Barr states they are not asking in a variance but rather an interpretation. Does the Committee agree with the Zoning Administrator’s ruling and interpretation as it is written? C. Shoemaker states than in her interpretation there was a violation. D. Barr says she is saying there was a structure in the front yard that is obstructing from the ground to the sky. Mr. Palizzi asks what structure? The deck and the unenclosed porch are in violation according to Zoning Administrator. The language states that these structures do not count as obstructions per the 1998 ordinance which is why her interpretation is incorrect. There is nothing from ground to sky obstructing as stated in Chapter 23. If the decision is made that the unenclosed porch is in violation and must be removed, then it means this structure will have to be torn down to the roof line of the home. D. Barr explains owners are free to apply for a variance. Mr. Palizzi states that if that is to be done than that would mean that there was an original noncompliance. Further, he states that while we do not have a Zoning Administrator from 1998 to explain statements; they do have several witnesses that have signed legal affidavits stating that the Zoning Administrator did make statements saying that unenclosed porches don’t count. Further, the Township doesn’t have anything stating the opposite. The owners did have one of the gentlemen that signed an affidavit was present earlier this evening. Mr. Baruzzini asks where does it leave the taxpayer if they paid every fee and followed every step as directed by the Zoning Administrator of that time? Further, he also completed a final inspection and notified the County which allowed them to notify the homeowner to be able to obtain an occupancy permit. Homeowner feels he is now stuck 24 years later with $60,000 sitting in materials all because the 1998 Zoning Administrator didn’t do his paperwork correctly. **D. Barr RESTATED Motion that the Zoning Administrator properly interpreted Chapter 2, Section 2.16 – General Lot and Yard Area Requirements for all Zone Districts, Item B.** C. Shoemaker seconded. Roll Call Vote: J. Meinke-yes, M. JAKUBIAK -no, Cole Shoemaker-no, Jim Gainey-no, D. Barr-yes. Fails 2-3.

Chapter 7, Section 7.03 – Height, Area and Yard Restriction of Platted and Unplatted Lots per 1998 Zoning guidelines. No additional comments by S. Kopriva. Mr. Palizzi feels that this is the same argument as to previous point. They feel she is incorrect in violation as defined in 1998 Ordinance that does not include unenclosed structures. D. Barr speaks to definition of front yards as area bounded by front lines of the main building, excluding steps and unenclosed porches.

**J. Meinke moves that section 7.03A the property is in compliance and has unoccupied front yard of at least 50’ per the definitions of the June 10,1998 ordinances.**  C. Shoemaker seconded. Discussion: S. Kopriva would repeat again comments of definition of what a front yard is defined as. Essentially this does speak to the 50-foot setback. She said this is a means to calculate the front area. J. Meinke argues that if the ordinance states you can’t count steps and unenclosed porches in the calculation according to 1998 this doesn’t make sense. Committee stands by interpretation that structure is in compliance. Mr. Palizzi adds that the original ordinance does speak to a setback as well as steps and unenclosed patios.

Roll Call Vote: J. Meinke-yes, M. JAKUBIAK -yes, C. Shoemaker-yes, J. Gainey- yes, D. Barr-yes Passed 5-0.

Chapter 19, Section 19.02 – Zoning Permit required. Mr. Palizzi states they did not get a permit as they did not feel they needed one. No discussion. **D. Barr motions that the Zoning Administrator properly interpreted Chapter 19, Section 19.02 – Zoning Permit Required. C. Shoemaker seconded.** No discussion

Roll Call Vote. J. Meinke-yes, M. JAKUBIAK-yes, C. Shoemaker-yes, J. Gainey- yes, D. Barr-yes Passed 5-0.

Passed 5-0

Section 19, Section 19.03 – Permits.

**J. Meinke moves that it was properly interpreted by the Zoning Administrator, section 19, section 19.03 by the June 10, 1998 ordinance. C. Shoemaker seconded.** No Discussion.

Roll Call Vote: J. Meinke-yes, M. JAKUBIAK-yes, C. Shoemaker-yes, J. Gainey- yes, D. Barr-yes Passed 5-0.

**D. Barr makes a motion that the Zoning Administrator properly interpreted sections** **of the Torch Lake Township 1998 Zoning ordinances Chapter2, 2.01, and Chapter 19, section 19.02 and section 19.03. The Zoning Administrator did not properly interpret Chapter 2, section 2.16 Chapter 7, section 7.03 of the Torch Lake Township 1998 Zoning Ordinance**

Roll Call Vote J. Meinke-yes, M. JAKUBIAK-yes, C. Shoemaker-yes, J. Gainey- yes, D. Barr-yes Passed 5-0.

Mr. Baruzzini requested one last clarification regarding owner’s decision to commence with maintenance only. D. BARR THANKS MR. BARUZZINI FOR HIS TIME AND STATES HE WILL BE RECEIVING THEIR DETERMINATION BY MAIL.

12. Approval of April 14, 2021 ZBA Meeting minutes. M. JAKUBIAK asks for name clarification on page 3, Public Comment is it Ashley or Taylor. Item correct as Ashley. D. Barr-Last page, item C line 2 should read “criteria **not** being met”. J. Meinke, page 2 Finding of Fact Item D line 3 should read “D” and not A. Page 3, Item 12 point 4 should remove wording “professor for” and change to read in part “to facilitate as an”. D. Barr motion to accept the April 14, 2021 minutes with changes. J. Gainey seconded. Passed 5-0.

13. **Communications** – none

14. **Public comments** – none

15. **Report of matters of interest to the ZBA from Planning Commission** C. Shoemaker reports that they have been working with PLANNER/ZONING ADMINISTRATOR. At last night’s Planning Commission meeting there is an application for a zoning change that is tabled for more information.

16. **Zoning Administrator report** provided to members. C. Shoemaker had question regarding Blight Ordinance 2949 US 31 South. Summary of storage of dilapidated vehicles and junk provided.

17. **Summary of Action Items to be taken on or before the next Zoning Board OF APPEALS** meeting on June 9, 2021 at 7:00 PM

Rules of procedure, Chapter 20 of Ordinance, Notice of Appeal Form and Guidelines Appeal application

18. **Comments/Concerns of the Public**

19. **Adjournment:** D. Barr motion to adjourn. C. Shoemaker second. Passed 5-0 at 10:05 PM

Draft minutes respectfully submitted by Veronica Beitner

Recording Secretary