TORCH LAKE TOWNSHIP

ANTRIM COUNTY, MICHIGAN

Community Service Building

Zoning Board Meeting

APPROVED Minutes WITH CORRECTIONS 5-0

April 14, 2021

**Present:** Chairman: Dave Barr Members: Jim Gainey, Jim Meinke, Mark Jakubiak, Marsha Petersen (alt. in for Shoemaker

**Alternates:** Laura Andersen

**Absent:** Cole Shoemaker

**Others:** Bob Cook, Supervisor; Kathy Windiate, Clerk

**Recording Secretary:** Jacqueline Petersen

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

Meeting called to order at 7:00 pm by Dave Barr

Roll call conducted by Barr.

**3. Approval of Agenda**

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

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

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

**5. FOIA Training - Kathy Windiate**

Kathy referred to the email she sent members of the ZBA from the MTA FOIA (Freedom Of Information Act). Windiate also distributed MTA’s publication *FOIA What’s all the fuss about?* She cautioned the group about discussions outside of a public meeting including emails. Decisions and discussions need to take place in the open meeting. Windiate explained the FOIA process from receipt through procedure. She explained what things are applicable to FOIA and what are not. She explained timelines and gave examples of FOIA requests received.

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

Barr summarized the rules and procedures hearing appeals for variance.

**7. Open Public Hearing for Appeal ZBA 2021-01 Livingstone**

1. **Variance on parcel #05-14-007-022-41 from Laura Livingstone-McNelis on behalf of the Phyllis J. Livingstone Trust, located at 1697 NW Torch Lake Drive, Kewadin, Michigan.** The property owners are wanting a land division, which would require a variance for an encroachment of the ten-foot setback by an existing boat house, to meet the 100 feet of frontage on Torch Lake. Variance of Chapter V, Section 5.04 Schedule of Regulations R-1and encroachment of the side yard setback by the existing boathouse.
2. **Communications Received** - none
3. **Public Comment**

Barr called for public comment and township officials’ comments and there were none.

Laura Livingstone McNelis addressed the board and gave history and reason for request. She is seeking a land division to divide parcel #05-14-007-022-41 and allow for a setback variance for an existing building (due to new lot lines if approved.) Board members asked questions of Livingstone McNelis and clarified setback variance request dimensions included drip line and made adjustments adding 6” to each dimension to accommodate. NW encroachment request is now 9’; and NE encroachment request is now 4’. Barr called for further questions from the board and there were none. Barr called for public comment and there was none. Barr asked for further comment from Livingstone - No.

**8. Close Public Hearing for ZBA2021-01**

Barr motion to close public hearing and go into deliberation, seconded by Meinke, Barr conducted a roll call vote passing 5/0. Motion carried.

**9. Discussion of Variance Appeal 2021-01 Livingstone**

FINDING OF FACTS

Motion by Barr to accept the following as a Finding of Fact

1. Allowing variance will allow north lot to be 100’ and buildable

Second: Jakubiak- Barr called for further discussion and roll call vote passing 5/0

Motion by Barr to accept the following as a Finding of Fact

1. The boathouse was built prior to 1983 and zoning would remain non-conforming

Second: Meinke - Barr called for further discussion and roll call vote passing 5/0

Motion by Jakubiak to accept the following as a Finding of Fact

1. Boathouse is not a mobile structure

Second: Barr - Barr called for further discussion and roll call vote passing 5/0

Motion by Barr to accept the following as a Finding of Fact

1. The variance request is for a 9’ encroachment on NW corner and 4’ encroachment on NE corner

Second: Gainey - Barr called for further discussion and roll call vote passing 5/0

Motion by Meinke to accept all of the facts presented above as the Findings of Fact. Motion seconded by Jakubiak; Barr called for further discussion and roll call vote passing 5/0

Motion by Barr to open public hearing; seconded by Jakubiak - Barr called for further discussion and roll call vote passing 5/0.

Barr asked Livingston if she had any further comments and she did not. Barr led the members into discussion of the Four Criteria outlined in Chapter 20 for approving variances.

Barr referred to Zoning Ordinance; Chapter XX; Section 20.06 - Dimensional Variances

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.

Motion By Barr to accept A as criteria being met; motion seconded by Meinke; Barr called for further discussion and roll call vote; 5/0; motion carried.

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.

Motion By Barr to accept B as criteria being met; motion seconded by Meinke; Barr called for further discussion and roll call vote; 5/0; motion carried.

1. That the special conditions or circumstances do not result from the actions of the applicant.

Motion By Gainey to accept C as criteria being met; motion seconded by Petersen; Barr called for further discussion and roll call vote; 5/0; motion carried.

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.

Motion By Meinke to accept D as criteria being met; motion seconded by Gainey; Barr called for further discussion and roll call vote; 5/0; motion carried.

Barr made Motion that the variance request #2021-01 Livingstone; for a 9’ encroachment on NW corner and a 4’ encroachment on NE corner of the setback by the existing boat house having met the four criteria in chapter 20 Section 20.06 A, B, C and D of the Torch Lake Township Zoning Ordinance is granted. Also, the pump house is a non-conforming structure. Motion seconded by Meinke. Barr called for further discussion and roll call vote passed 5/0.

Barr informed L. Livingston-McNelis that the Township will follow up with a letter to the above effect

**10. Open Public Hearing for Appeal ZBA 2021-02 Torchlake LLC**

1. **Variance on parcel #05-14-815-024-00 from Mark Blackmore of Blackmore Property Maintenance on behalf of Torchlake LLC, Lot 29 of West Pointe Shores, located at the corner of West Pointe Drive and NW Torch Lake Drive, Kewadin, Michigan. The property owner would like to place a 16’x30’ accessory structure on the vacant lot to house maintenance equipment. Variance of Zoning Ordinance Chapter VII, Section 7.01 Permitted Uses A. “An accessory use or structure is not allowed on lots within the R-1 Zone prior to the establishment of a primary use or structure, such as a 1-unit dwelling.”**
2. **Communications Received**

Petersen read letters received

1. Mike Fontana wrote against approving the request
2. Donna, Nancy and Amy Lowichik wrote against approving the request
3. **Public Comment** Barr called for public comment and there was none

Ashley Blackmore of Blackmore Property Maintenance spoke on behalf of Torchlake LLC in explanation of the variance request. The request is to construct a maintenance/storage building to store yard maintenance equipment, mowers and rakes, fall and spring cleanup items, paddleboards a small tractor and snowblower on lot#29 of West Pointe Road., which is currently being used for the septic system for the residence at 11756 West Pointe Road. She stated the structure will be minimal and include a landscape screening. The board asked questions of Blackmore specifically about the location of the existing drain field and alternate locations for this structure, and its proposed size. Blackmore stated the proposed building will not be located over the drain field and will have NO foundation. Blackmore stated they are open to aesthetics and landscape screening requirements. Barr called for further concerns and comments from the public and there were none.

**11. Close Public Hearing for 2021-02**

Motion by Jakubiak to close public hearing, seconded by Meinke. Barr called for further discussion and roll call vote passing 5/0

**12. Discussion of Variance Appeal 2021-02 Torchlake LLC**

FINDING OF FACTS

Motion by Barr to accept the following as a Finding of Fact

1. TLT Zoning Ordinance 7.01 Section A outlines Structures on lots with no primary residence are not allowed.

Second: Jakubiak - Barr called for further discussion and roll call vote passing 5/0

Motion by Barr to accept the following as a Finding of Fact

2. TLT Zoning Ordinance Chap 23 Definition of accessory building Accessory Building – A building that is located on a lot on which a principal use and/or principal building is located, and that is devoted to and occupied by a use that is customarily incidental and subordinate to that principal use and/or principal building. Examples include but are not limited to residential garages, sheds, carriage houses, boat houses, greenhouses, guard or gate houses and barns.

Second: Gainey - Barr called for further discussion and roll call vote passing 5/0

Motion by Barr to accept the following as a Finding of Fact

3. TLT Zoning Ordinance Chap 23 Definition of accessory structure: Accessory Structure - A structure on the same lot and of a nature customarily incidental and subordinate to the principal structure.

Second: Meinke - Barr called for further discussion and roll call vote passing 5/0

Motion by Meinke to accept the following as a Finding of Fact

4. Lot 29 is located in a plotted sub and was improved upon to bring in fill to FACILITATE AS AN off-site septic for lot 19 (11756 West Pointe Road).

Second: Barr - Barr called for further discussion and roll call vote passing 5/0

Motion by Meinke to accept the following as a Finding of Fact

5. At this time no primary dwelling exists on Lot 29

Second: Gainey - Barr called for further discussion and roll call vote passing 5/0

Motion by Jakubiak to accept all of the facts presented above as the Findings of Fact. Motion seconded by Meinke; Barr called for further discussion and roll call vote passing 5/0

Motion by Barr to open public hearing; seconded by Gainey - Barr called for further discussion and roll call vote passing 5/0.

Barr asked Blackmore if she had any further comments, she thanked the board for their time and stated her intent is to follow zoning and she is open to any size and aesthetic requirements. Barr led the members into discussion.

Barr referred to Zoning Ordinance; Chapter XX; Section 20.06 - Dimensional Variances

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.

Motion By Meinke NOT to accept A as criteria being met; motion seconded by Jakubiak; Barr called for further discussion and roll call vote; 5/0; motion carried. ITEM A CRITERIA FAILED

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.

Motion By Barr NOT to accept B as criteria being met; motion seconded by Meinke; Barr called for further discussion and roll call vote; 5/0; motion carried. ITEM B CRITERIA FAILED

1. That the special conditions or circumstances do not result from the actions of the applicant.

Motion By Barr to accept C as criteria NOT being met; motion seconded by Jakubiak; Barr called for further discussion and roll call vote; 5/0; motion carried. ITEM C CRITERIA FAILED

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.

Motion By Meinke to accept D as criteria NOT being met; motion seconded by Gainey; Barr called for further discussion and roll call vote; 5/0; motion carried. ITEM D CRITERIA FAILED

Barr made Motion that the variance request #2021-02 Torch Lake LLC for a 16’x30’ accessory structure for maintenance equipment, having not met the four criteria in chapter 20 Section 20.06 A, B, C and D of the Torch Lake Township Zoning Ordinance is denied. Motion seconded by Gainey. Barr called for further discussion and roll call vote passing 5/0.

Barr informed Blackmore she would receive written correspondence from the township regarding the outcome.

**13. Approval of November 11, 2020 Meeting Minutes**

1 Correction. Page 2, section 8, number 8 - motion was made by Barr (not Graber)

Motion by Meinke to accept November 11, 2020 Meeting Minutes with correction; second by Gainey Barr called for further discussion and vote passing 5/0

**14. Any Communications Received Not Pertaining to Variance**

None

**15. Public Comment not pertaining to variance**

Barr called for public comment and there was none

**16. Report of matters of interest to the ZBA from Planning Commission**

Shoemaker absent

Township Supervisor Bob Cook spoke to the board regarding the resignation of Deb Graber and the plan for moving forward with Sara Kopriva (our planner) and Jackie Petersen

**17. Report from Zoning Administrator**

distributed was an updated *Checklist for March 2021,* TLT 2021 Land Use Permits spreadsheet through Permit ZP#2021-22, ZBA Appeal #2021-3,

**18. Summary of Action items to be taken on or before the next ZBA Meeting**

May 12, next meeting - 2 variance requests to be heard. - Barr distributed paperwork for ZBA 2021-03 and ZBA 2021-04

May 13, 6pm Steve Langworthy presentation at TLT for ZBA and PC - please attend

Barr distributed the Rules of Procedure for the Zoning Board for review at a month with no scheduled variance requests, appeals or interpretations.

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

Barr called for public comment and there was none

**20. Adjournment 9:13pm**

Barr motion to adjourn; seconded by Gainey, Barr called for further discussion and vote passing 5/0