**TORCH LAKE TOWNSHIP**

**ZONING BOARD OF APPEALS (ZBA)**

**Regular Meeting APPROVED WITH CORRECTIONS Minutes AT THE DECEMBER 7, 2022 SPECIAL MEETING. PASSED 5-0.**

**Wednesday, November 16, 2022 at 7:00 pm**

**Community Services Building**

**Present:** Laura Andersen (Chair), David Nussdorfer, Kristin Graves, Kevin Woodward

**Alternate:** Rita Service (in for C. Impellizzeri)

**Absent:** Chad Impellizzeri

**Audience:** 10

**Others:**  Sara Kopriva, Jackie Petersen

**Recording Secretary:** Veronica Beitner

1. **Call to Order/Roll Call** Meeting called to order at 7:02 pm by Chair L. Andersen followed by Roll Call (see above)
2. **Approval of Agenda** (M/S) D. Nussdorfer/R. Service motion to accept as presented. Passed 5-0.
3. **Approval of August 17, 2022 Meeting Minutes** (M/S) D. Nussdorfer/K. Graves motion to approve with corrections. G1, last sentence before Close of Public Hearing ADD “Bill Aslum has no objections to Mr. Loy’s variance request. H(D) “A, B and D are not met”. Passed 5-0.
4. **Conflict of Interest -** None
5. **Public Comment** - None
6. **Communication(s)** None
7. **Hearing of Case**
8. ***ZBA 2022-02 Torchlake LLC Zoning Ordinance Interpretation and Appeal of Zoning Administrator’s Decision***

Chair L. Andersen reviewed process of Case ZBA

1. *Open Public Hearing* by Chair Andersen at 7:09 pm
2. *Presentation by Staff* – Zoning Administrator S. Kopriva and Torch Lake Township Attorney T. Millar. S. Kopriva reviewed package contents provided for review. Reviewed setback definitions for lake front properties. Front set back is on the lake. Paperwork included previous Zoning Administrator’s letter referencing Zoning/Land Use Exemption Form in regards to the Ground Level patio. Attorney T. Millar specifies there are two ordinance uses to be addressed tonight. The first is the setback requirements and compliances and the second is helicopter usage in a private residence, in an R1 zoned district. Recommends that the Board not address the patio issue in regards to the setback of the front yard due to the inclusion of the Zoning/Land Use Exemption Form provided by the Applicant. Advises that this is not an issue for the ZBA to WEIGH IN.. Mr. Millar states the second usage regarding Helicopter landings/usage to get to and from a home. If used in this capacity, it would fall under the argument of an accessory use under the principal use in the R1 district.
3. *Communications Received* – Letter from B. Spencer, 709 N. West Torch Lake Dr dated November 16, 2022 with his thoughts regarding the previous Zoning Administrator’s Zoning/Land Use Exemption and other comments. Letter from Klynt Marcusse, 11767 Wild Cherry Lane, Kewadin dated November 16, 2022 stating the Board should reconsider the usage of Helicopters in an R1 area for personal use. Third letter from C. Impellizzeri, Zoning Board of Appeals member with his is review and Finding of Facts.
4. *Presentation by Applicant* – Attorney Elizabeth McLachlan from Alward Fisher Rice Rowe & Graf PLC, represents Torchlake, LLC, owners of 11756 West Pointe Road. Defined usage of helicopter once a dwelling has been established. Further comments included definition of “customarily and incidental versus customarily incidental” and specific to the State of MI. Review of usage to a residential property and the helicopter being used solely as a means of private transportation to get to their home from the airport as a customary personal travel. In regards to the patio, they do not contend that the patio is not within the 50’ setback. They are claiming the former Zoning Administrator acted in a way that creates a contract of equity which would stop the Township from enforcing the Ordinance in this specific instance. Requests that the Board review the Case laws provided in brief that is specific to the State of MI. RITA SERVICE (ZBA MEMBER) ASKED APPLICANT’S ATTORNEY AS TO WHAT WAS ACTUALLY BUILT: A PATIO, A HLIPAD OR A LANDING PAD AS ALL THREE TERMS WERE USED INTERCHANGEABLY IN THEIR LEGAL BRIEF. APPLICANT’S REP STATED THAT PERMISSION WAS GRANTED FOR IT TO BE USED AS A PATIO BUT CAN BE USED AS ALL THREE. ADDITIONALLY, APPLICANT’S REP STATED THAT THEY ARE NOT CONTENDING THAT THE TOWNSHIP WAS ONLY NOTIFIED OF ITS INTENDED USE AS A PATIO.
5. *Public Comment* – Michael LUCIDO, , 11720 EAST STREET, KEWADIN spoke of helicopter flyovers and how the noise disrupts his professional work from home as a psychologist AS COULDN’T HEAR HIS PATIENT Further he states it disrupts NATURAL PEACE IN THIS RURAL AREA AND natural wildlife(LOONS, BALD EAGLES). BOTHERSOME WITH FLYING OVER HIS HOUSE AT 95 FEET. Opposes usage. Deb Graber, 1227 Beechnut Lane, previous Zoning Administrator states that at the time of the letter, there were no restrictions in regards to GROUND LEVEL patios. She was unaware of any other uses at the time. Does reference that today there are other helicopters landing at personal properties on Torch Lake R1 properties. Dave Holland, 267 N. West Torch Lake Drive, lives APPROXIMATELY 2000’ FROM HELICOPTER PAD. . States there are two helicopters as well as one plane with summer arrivals as early as 6:30 am. Flight patterns did come within close proximity to properties causing disruptions. Opposes usage. Bill Stridiron, 5903 N. M88 in Eastport. Spoke to experience this past summer that passed over him by about 300’ and witnessed landing which was followed immediately by a plane with many passengers. States this area is not meant to be a commercial usage, it is meant to be a personal residence. OBSERVED A NEIGHBOR’S PROPERTY BEING CIRCLED 3 TIMES AFTER TAKEOFF. Lee Scott, 347 N. West Torch Lake Dr lives in close proximity to property in question. Spoke to clarify that helicopter landings happen as early as 5:30 am. In regards to Torchlake LLC stating it is used as personal transportation, Mr. Scott and his wife witnessed numerous occasions where it was being used to transport many guests. OBSERVED CIRCLING AS PARRATENTLY FOR ENTERTAINMENT PURPOSES VS. MODE OF TRANSPORTATION. Casey WigginS, 131 NW TORCH LAKE DRIVE; approximately ¾ mile from property in appeal comments that this is not a use to simply transport people from the home to the airport and back. AS A PILOT, HE IS AWARE OF FAA RULES OF FLYING SAFELY. SEVERAL ORDINANCES BUT ONE IN PARTICULAR STATES ONE MUST BE GREATER THAN 500’ ABOVE ANY CONGESTED AREA. AS THERE ARE MULTIPLE RESIDENTIAL PROPERTIES, FEELS AREA IS CONGESTED. FLYING UNDER 500’ IS A FAA VIOLATION. HE PERSONALLY WITNESSED SEVERAL AGGRESSIVE TAKEOFFS & LANDINGS & NOTED THAT IF THAT BEHAVIOR OCCURRED AT TRAVERSE CITY AIRPORT, THE PILOT WOULD HAVE RECEIVED A CALL FROM THE TOWER. STATES THAT NOT ONLY IS THERE A GENERAL USE ISSUE BUT A SAFETY ISSUE. NOTED THAT THERE ARE GOOD POLICIES & PROCEDURES THAT ANY CFI WOULD ASCERTAIN ARE NOT BEING FOLLOWED.
6. *Close Public Hearing* - Chair L. Andersen closed public hearing at 7:42 pm.
7. *Deliberation & Possible Decision by ZBA* – Zoning Board of Appeals discussion ensued which included clarifications, definitions of terms taken from Mariam Webster dictionary and review of various Finding of Facts that determined the following.

**FINDING OF FACTS for section 2.16:**

1. Property is in an R1 Zoning District
2. The helicopter pad/patio, is within 50’ of the water’s edge
3. The Zoning Ordinance requires a 50’ setback on the water side of all R1 properties
4. ZBA 2020-3 decision defines a structure and helipad falls within the definition
5. Ground level deck requirements being exempt from zoning permit requirements according to Zoning Ordinance section 19.02B and all structures that are exempt from requirements SHALL conform to all setback requirements.
6. Zoning Administrator does not have the authority to grant a dimensional variance.
7. Legal brief dated 11.15.22 section B, first sentence states applicant’s confirmation that the patio violates the setback zoning ordinances because the patio is a structure placed within the 50’ setback area from the water’s edge.
8. Legal brief dated 11.15.22 section 1, second paragraph, line 2 states the certificate allows the patio to be built within a 50’ setback area. Again; on Applicant’s attachment A, exemption certificate does not reference the 50’ setback, language states “near shoreline.” There is no language that authorizes the setback.

*Rebuttal*: E. McLachlan states based on her belief the drawings provided were presented at the time of original review. Chair Andersen states the drawings do not show setbacks. Additionally, R. Service mentions that the drawings reflect language “proposed pad for takeoff and landing.”

(M/S) L. Andersen/D. Nussdorfer motions to deny ZBA 2022-02 appeal of Zoning Administrators decision in regards to Section 2.16 that the patio structure is in the 50’ water setback and therefore is in violation of the Zoning Ordinance based on finding of facts #1-#8. Roll call Vote: D. Nussdorfer – yes, K. Graves – yes,

R. Service – yes, L. Andersen – yes, K. Woodward – yes. Denied by a vote of 5-0.

**FINDING OF FACTS regarding if the helicopter is an accessory use in an R1 district**:

1. Zoning Ordinance defines accessory use as a use on the same lot and of a nature customarily incidental and subordinate to the principal use.

2. Merriam Webster defines customary as “by according to custom or established practice.” Synonyms include usually, commonly, routinely, regularly, accepted. traditional, conventional, standard. Helipad is not common standard or conventional in Torch Lake Township. Dictionary also defines incidental as “happening or likely to happen in an unplanned or subordinate conjunction with something else.” Synonyms include ancillary, coincidental or secondary.”

3. Torch Lake Township Zoning Ordinance is characterized as a permissible Ordinance. Therefore, the Helicopter landing pad DOES NOT QUALIFY as a permitted or special use under Section 7.02 of the Zoning Ordinance.

4. There are two helicopter pads in usage in Torch Lake Township as reported in verbal comments at tonight’s ZBA Hearing. According to the Torch Lake Township Master Plan from 2015, Table 13, there are 1,428 Dwelling Units.

5. Residential helicopter use is not common, customarily incidental to this area and therefore is not an accessory use to an R1 property in Torch Lake Township.

*Rebuttal:* Cases cited by the TLT Attorney tonight are from Arizona and Connecticut and are not binding in Michigan. MI Court case *LERNER* (Ernestine LERNER, Plaintiff-Appellant, v BLOOMFIELD TOWNSHIP, a municipal corporation. Defendant-Appelee., 1981)states “None of the Plaintiffs authorities with the proposition that her practice is customarily done in homes is relevant toward her claim that it is customarily incident to a residential use. The term incident is pivotal here.” Attorney McLachlan states she believes the MI Court is saying is that whether or not it is customarily done is not relevant to the discussion. With incidental being the most important word. The cases in which an accessory was found, the question in which it enhances the use to the property is relevant in this case. It also is only occurring there because of the principal use of the residence.

(M/S) L. Andersen/D. Nussdorfer Motion to uphold the decision of Zoning Administrator that landing a helicopter in the R1 zoning district is a violation of Section 7.01 of the Zoning Ordinance. Appeal of ZBA 2022-02 denied based on the Findings of Facts and interpretation that landing of helicopters is not an accessory use in Torch Lake Township. Roll Call Vote: K. Woodward – aye, D. Nussdorfer – aye, R. Service – aye, K. Graves – aye, L. Andersen – aye. Passed 5-0.

Conclusion of ZBA 2022-02 at 9:25 pm.

**H. Miscellaneous Business**

1*. Election of Officers*

Chair – L. Andersen nominated

Vice Chair – C. Impellizzeri nominated

Secretary – K. Graves nominated

(M/S) L. Andersen/K. Woodward motion to elect the slated officers for a one-year term as Chair Laura Andersen, Vice Chair Chad Impellizzeri and Secretary Kristin Graves. Passed 5-0.

*2. 2023 Meeting Calendar*

2nd Wednesday of every month at 6:00 pm. (M/S) K. Graves/L. Andersen make a motion that the meetings for 2023 calendar fall on the third Wednesday of every month at 6:00 pm. PASSES 5-0.

*3. Zoning Administrator’s Report*

Report provided to all Commissioners for review. Any questions to be directed to Zoning Administrator

*4. PC Representative to ZBA’s Report*

K. Woodward reports on last meeting of 11.10.22. Began process of review of the Steering Committee’s recommendations. Tentatively scheduled to meet December 13, 2022 with input from S. Kopriva and Supervisor B. Cook

**I. Public Comment** - None

**J.** **Summary of Action Items before next ZBA Meeting** – None. Suggestion to move December meeting date to earlier in the month for approval of tonight’s minutes. Scheduled Special meeting for 12.7.22 at 6:00 pm. Regular meeting cancelled for December.

**L.** **Adjournment** (M/S) L. Andersen/K. Woodward move to adjourn the meeting at 9:39 pm. Passed 5-0.

Minutes Respectfully submitted by Veronica Beitner and subject to approval at the next meeting.