**TORCH LAKE TOWNSHIP**

**ANTRIM COUNTY, MICHIGAN**

APPROVED Meeting Minutes of Zoning Board of Appeals 5-0

 November 11, 2015 Meeting

Community Service**s** Building

Torch Lake Township

Present: Keelan, Barr, Jakubiak, Houghton, Spencer

Absent: Bretz, Sumerix

Recording Secretary: Olsen

Audience: Martin

1. **Call to Order:** The meeting was called to order by Chairman Keelan at 7:08 p.m.

Motion by Keelan to amend agenda and add **the** Martin Appeal, seconded by Houghton, passed 5-0. Keelan informed those present that Zoning Administrator Vey will be late in arriving tonight; his presence is required for the Martin gazebo discussion.

**2. (A) Approval of Minutes of ZBA Meeting of October 14, 2015**

 Motion by Keelan to approve October 14, 2015 minutes, with discussed changes to page 2; seconded by Houghton; Motion passed 5-0.

 **(B) Approval of Minutes of ZBA Special Work Session held on October 27, 2015.**

Houghton explained the challenges of providing minutes of a work-session, indicating it was difficult for the Recording Secretary to keep up with the numerous conversations. He said, since the meeting was a work session and we were not making any decisions, the minutes could be greatly abbreviated; adding that they still needed some work. Keelan said, if Houghton wanted to try to re-do them, we didn’t have to approve them tonight. That could be done at a subsequent meeting. Houghton thought that would be good. It was agreed that Houghton would try to hone the minutes down a little bit. Houghton will edit the Oct. 27th work session draft minutes and give them to Chris Olsen, Recording Secretary. They would then be put on the next meeting’s agenda for approval.

Keelan said we need to verify that the property owner has verified the front-yard setback line. Houghton said he’d get a letter together stating specifically what we need from the property owner, stating otherwise we won’t get it.

1. **Election of ZBA Officers:**

Nomination of Barr for ZBA Vice Chairman by Spencer; seconded by Keelan. Passed 5-0.

Nomination of Houghton for ZBA Secretary by Keelan; seconded by Spencer. Passed 5-0.

Nomination of Keelan for ZBA Chairman by Spencer; seconded by Barr. Passed 5-0.

1. **Discussion of Status of Bucklew Appeal:**

Houghton reminded the ZBA members that at the Oct. 14, 2015 meeting they decided that additional information about the variance request was needed from the property owners. He explained the difficulties he had in trying to get a response from Mrs. Petrillo about her decision about her preferred meeting date. He suggested that we schedule a June hearing.

Motion by Houghton to add Bucklew-Petrillo Variance Appeal hearing to the June 2016 ZBA meeting agenda; seconded by Barr.

Summary of Discussion:

* Houghton said there is a 2 ½ foot variance between Official High Water Mark amongst recording agencies, adding that we need to pick which one to use in our Ordinance.
* Spencer cited ZBA Sections 20.03, 20.04 and 20.10 that specify the ZBA can review actions/decisions made by the Zoning Administrator (ZA). This applies to the ZBA’s decision at its Aug.12, 2015 public hearing to consider a deck and attached shed as one entity. That Variance appeal was denied by the ZBA. Subsequently, it was learned at the Oct. 27th meeting that the ZA overturned this ZBA decision. Spencer said the ZA does not have any authority to overturn the ZBA’s decision and said that the ZBA’s Procedures and Township Zoning Ordinances must be followed, adding that this should be clarified before we start scheduling future hearings on this matter.
* Keelan said that the ZA told us we could challenge his decision and the ZBA voted 3 to 2 not to do so.
* Spencer noted the Aug. 12th ZBA decision was in effect by the time the ZA overturned it.
* Houghton, in retrospect, said ZA should not have been given open charge to meet with applicant and come up with ideas for being in compliance.
* Keelan cited Martel e-mail to Township attorney asking about ZA actions, requesting further clarification.
* Keelan confirmed that Mrs. Petrillo was given the option of letting him know within two weeks about when she wanted to schedule another hearing. He called her; Ralph called her; She didn’t return the calls, saying it doesn’t matter if you don’t have the answer to where the setback line is . . . we just wouldn’t do it (schedule a hearing). Barr agreed. Houghton added . . . if we don’t have it in June, we won’t do it.
* Spencer suggested not scheduling hearing at this time, saying we ought to have the Township Attorney’s responses to Alan’s questions in hand before we schedule a hearing. He said the ZBA also needs to be able to verify the location of the setback line, the Ordinary High Water Mark (OHWM) and other information requested from Applicant. He suggested the ZBA wait to receive this information prior to setting a hearing date.

Chairman Keelan called for a vote on the motion. Motion passed: 4 ayes; 1 nay (Spencer).

5. **Report from Planning Commission Meeting and Pending Matters of Interest to the ZBA:** None. (Bretz was absent)

6. **Report from Alan Martel Concerning Township Board Meetings and Matters of Interest to the ZBA:** None.

7. **Discussion Regarding Certain Provisions of the Zoning Ordinance Which are Ambiguous and/or Unclear and Possible Recommendations to the Planning Commission Regarding Same:**

* Houghton questioned Zoning Ordinance 2.16. B.3. and whether it should remain.
* Spencer said “on the ground” is different from “in the ground”.
* Keelan agrees with Houghton to remove 2.16. B.3
* Houghton will send the Planning Commission a memo regarding the ambiguity of deck-related language, and ask that they send draft to ZBA members for their consideration.

8. **Review and Update to Packet of Materials Given to Variance Applicants:**

Houghton handed out copies of Variance Appeal form and other ZBA materials, asking ZBA members to review content of the packets given to Variance Appeal Applicants and to pass along their comments to him for insertion and consolidation. The new packet will be considered at the June 2016 ZBA meeting.

1. **Consideration of Martin Appeal:**

Vey arrived late. Chairman Keelan thanked Mr. Martin for his patience an began the discussion of his situation:

* Houghton asked Vey to bring us up to speed on what the final decision was and where we’re at . . . and on any discussions with the property owner.
* Vey said there have been no discussions with Applicant since the original ZBA decision.
* Keelan clarified that Vey’s appeal to ZBA (Sept. 9, 2015) asked about a “structure” not a “gazebo on wheels in the setback”. No decision was made about a “gazebo on wheels in the setback”.
* Houghton reiterated that decision was that a “gazebo is not a structure”. But it has to be something – Building? Accessory Building?
* Spencer cited attorney’s letter dated 9/8/15, that concluded the “gazebo at issue is an accessory building which, under the terms of the Zoning Ordinance, may not be placed within a front yard setback of a residential parcel of land. The placement of the gazebo violated Sections 2.06 and 2.16(B) of the Torch Lake Township Zoning Ordinance” Vey has not communicated with property owner; he said he is awaiting clarification.
* Houghton read definition of **“building”** from Zoning Ordinance: “Any structure, tent or mobile home, either permanent or temporary, having a roof and supported by columns, walls, or other supports, used for housing, storing, enclosing or sheltering persons, animals or personal property or for conducting business activities or similar uses.”
* Houghton also read the definition of an **“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, boathouses, greenhouses, guard or gatehouses and barns.”
* Spencer said the property owner is entitled to a letter from Torch Lake Township with an explanation of the resolution of these circumstances.
* Vey reiterated his opinion that it is “intention” versus “literal interpretation” of Ordinance.
* Spencer said that, based on the ZBA’s decision of 9/9/15, a gazebo on wheels is not a structure. It needs to be defined as something. “Building” definition says it has roof and columns. He advised Vey to ask the Township attorney for advice on an interpretation.
* Keelan said we’ve decided that he (Mr. Martin) doesn’t get a variance. We decided the thing is not a structure. We made no decision about, “Can a gazebo with wheels be in the setback?”
* Houghton said that definitions within Zoning Ordinance do not cover a gazebo with wheels.
* Vey, in response to a question from Mr. Martin about the purpose of “setbacks”, said that the intent of the ordinance is for safety, uniformity and aesthetics.
* Houghton said, “If it’s not a structure, it’s got to be something. So we’ve made our decision. It seems to me that it’s really almost in Josh’s hands. He knows the situation. If he feels that there is something in the Zoning Ordinance that demands; requires that it should be removed, then he has to address the issue with the property owner. If he doesn’t think that . . . I guess that’s the end of it.”
* Spencer, reading comments from the Township Attorney, indicated the issue is: “Is a gazebo affixed with wheels permitted in the front yard setback of a residential parcel under the TLT Zoning Ordinance?” Short answer: “No.” “The gazebo is an accessory building which, under the terms of the Zoning Ordinance and its placement violates the requirement that the front yard setbacks be open and unobstructed.” The attorney concludes that, “the gazebo at issue is an accessory building, which under the terms of the Zoning Ordinance, may not be placed within the front yard setback of a residential parcel of land.
* Vey indicated that he was aware of the attorney’s interpretation, although he did not personally ask the attorney for it.
* Mr. Martin said, “Under your definitions in the Zoning Ordinance, this is not a “building” . . . it is not an “accessory building” . . . “it is not a “temporary building” . . . it’s not a “temporary structure.” It’s none of those things.”
* Houghton said that an accessory building is customarily incidental to the main use of the property.” “So it seems to me . . . and this would be for Josh to decide . . . Josh has to go through the Ordinance and say: Does this Ordinance prohibit having that item in the setback area?”
* Spencer suggests that the ZA try to get this situation clarified and discuss the opinion of the Township attorney in light of the Sept. 9th decision of the ZBA ruling that a gazebo on wheels is not a structure.
* Vey indicated there would be some contact with the attorney.
* Houghton said to the ZA, “After getting that information from the attorney and looking it over, you will either say he can keep it there or he can’t. We can always overturn your decision, either way.
* Keelan states, “The ordinance mentions an unoccupied front lot line setback having a minimum distance of 50 feet. It doesn’t reference a structure. It doesn’t reference anything. All it says is ‘unoccupied’ . . . So, is the gazebo ‘occupied?’”
* Keelan asks Vey, “Couldn’t you simply say, ‘Look, I’ve decided it’s not legal’?
* Vey responded: “ That has to be based, for me personally; morally, that has to be based on something.”
* Keelan says, “Well, base it on “an unoccupied front lot line setback.”
* Vey replies, “That’s what I was just saying . . . “
* Keelan: “And then . . . he can appeal. And then, if we deny the appeal, he can go to court.”
* Mr. Martin replied: “I can spend another hundred bucks.”
* Keelan said that the ZBA would waive the re-application fee for appeal of a decision by the Zoning Administrator.
* Vey will contact the attorney and send the response to the ZBA.
* Barr asked: So, what did we determine? Josh is going top get with the attorney?
* Houghton replied: “It’s in Josh’s hands . . . we’re done with it.”
* Spencer asks: “Do we get a report back?”
* Barr says: “I think that’s a good idea.”
* Keelan asks Vey: “Will you send us a report? Keep us up to date on what’s going on?”
* Vey replies: “Certainly will.”

10. **Any Miscellaneous Administrative Matters:**

Spencer said that the ZBA’s Rules and Procedures should be followed. He also commented that Chapter 20, Section 20.07, Conditions of Approval, in Ordinance, states that conditions can be placed on a variance.

11. **Comments/Concerns of the Public:**

None.

 With no further business, a motion to adjourn the meeting was made by Houghton at

 8:43 P.M. Motion carried: 5 ayes; 0 nays. Meeting adjourned.