TORCH LAKE TOWNSHIP

ANTRIM COUNTY, MICHIGAN

Community Service Building

Zoning Board Meeting

APPROVED MINUTES WITH CHANGES AT THE JANUARY 19, 2022 MEETING. PASSED 5-0

November 10, 2021

**Present:**

Laura Andersen (Chair) Chad Impellizzeri, David Nussdorfer, Bob Hawkins (arriving late due to fire call)

**Alternates:** Kristin Graves (in for B. Hawkins until agenda item #9) & Marsha Petersen (in for Jakubiak)

**Absent:** Mark Jakubiak

**Audience:** 15

**Others:** Sara Kopriva, Bob Cook, Sharon Schultz

**Recording Secretary:** Jacqueline Petersen

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

Meeting called to order at 7:00 pm by Andersen

Roll call was conducted by Andersen

**3. Approval of Agenda**

Change: Item 6 and 9; insert Applicant’s Presentation as item B and move B, C and D down accordingly.

Motion by Andersen to approve the agenda with changes; seconded by Petersen. Andersen called for further discussion and vote; 5/0 motion carried

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

Andersen polled ZBA members asking if there were any conflicts of interest and there were none for ZBA 2021-05 Eastport Market Sign.

Andersen polled ZBA members asking if there were any conflicts of interest for ZBA 2021-06 Turek - 1 Conflict from Kristin Graves who lives within 300’ of applicant.

**5. Summarization of the Procedures and Rules**

Andersen summarized the procedures and rules

**6. Open Public Hearing for Appeal ZBA 2021-05 Eastport Market**

1. **Variance on parcel #05-14-650-012-00** The property owner is seeking an appeal of the zoning administrator’s decision resulting in a complaint regarding the sign - lighting**. Kopriva** summarized the nature of the appeal - Township received a complaint that the sign did not meet the requirements of the language in the ordinance. Kopriva followed up the complaint with a letter to remove sign which the applicant is appealing. Kopriva referenced and read the ordinance sections which she used to make her decision.
2. **Presentation by applicant Sean McCausland**

McCausland stated that the company he hired to make his sign failed to get zoning restrictions - he was not trying to break the ordinance. Structure is the same size, with a smaller square footage sign. There is nothing in the ordinance that references LED signs. Also there is no language that states electronic changeable copy signs are not permitted. He stated each diode shields itself in an LED sign and perhaps the ordinance is referencing older signage. The light does not project light into eyes or on road. No residential units nearby. The sign is capable of flashing and strobe but he is willing to sign an affidavit that he will not program the sign to do this. He can program the sign to deliver 1 message per day. He stated he is trying to improve the look. He apologized for not knowing the ordinance before installation.

1. **Communications Received** -

**Anonymous public comment** was read - NOT in support of overturning the zoning administrator’s decision

1. **Public Comment**

**Don Schultz** 5450 Birch Drive commented in favor of allowing the sign to remain with restrictions, such as being on during open hours only - he suggests the ZBA look at putting updated language in the ordinance that is more up to date (includes LED lighting).

**Bob Spencer** 709 NW Torch Lake Drive spoke to ZBA to consider if ordinance is restrictive. He referenced Section 2.28 “lighting” and encouraged ZBA members to take into consideration the spirit of the ordinance. Spencer stated he agreed with the ruling of the Zoning Administrator to not permit the sign. Spencer read from an MTA guide regarding the role of a ZBA member.

**Caleb Boge** - owns 4 lots behind the Market. He spoke to the board to consider LED technology in so far as it’s environmental friendliness, and it’s natural progression of technology in signs. Regardless of outcome - the future is in LEDs. He urges the board to consider what this means going forward, LEDs are everywhere and are indeed individually shielded (LED). He asked Sean how much he spent on sign ($50,000). He asked Sean what the sign means to his business - Sean stated it’s getting his message out to customers who may not know all of their services and products and he is continually making improvements. Caleb also stated that electronically programmable signs are safer with less liability exposure. He suggests looking at neighboring township ordinances to be sure ours is up to date. He feels the sign Sean placed is a significant improvement in what was there and was surprised there was a problem and is firmly in support of allowing this sign and others like it in the community.

**7. Close Public Hearing**

Motion to close public hearing Andersen/Petersen 5/0 passed

**8. Discussion of Appeal 2021-05 Eastport Market Sign**

FINDING OF FACTS

1. There was an anonymous phone call complaining about the sign - Marsha Petersen
2. The lights are shielded by virtue of them being LEDs - Impellizzeri
3. The zoning ordinance does not specifically allow or ban LED lights - Andersen
4. The sign as programmed does not flash or strobe - Andersen
5. The sign as programmed does give the appearance of varied lighting effects and movement - Andersen
6. The sign does not affect any neighboring residents - Andersen
7. The sign does not shine into any road right of way - Andersen
8. The sign does not shine into the sky - Andersen
9. The sign can be programmed to NOT have any varied lighting effects or movement - Impellizzeri

Andersen made a motion to accept the above as findings of fact; motion seconded by Nussdorfer. Andersen called for further comment and conducted a roll call vote 5/0 passed.

Andersen asked McCausland if he had any further comments, he did not. Kopriva clarified that zoning is permissive and if the activity/use it’s not listed in the ordinance then it’s not allowed. Tonight is not to decide if the sign should or should not be allowed, rather did she make the correct decision. The ZBA cannot put a condition on their decision. Nussdorfer made a motion that Eastport Market is NOT in violation of the zoning ordinance; Seconded by Impellizzeri - Andersen asked for additional comments and conducted a roll call vote: Impellizzeri - No, Petersen-Yes, Andersen - No, Graves - No, Nussdorfer - Yes. - Motion failed 2/3.

Andersen made motion to deny Eastport Market’s appeal of the zoning administrator’s decision; the sign is in violation of section 3.08 K. Seconded by Impellizzeri. Andersen called for further discussion and conducted a roll call vote. Impellizzeri - Yes, Petersen - Yes, Andersen - Yes, Graves- Yes, Nussdorfer - No. Motion carried 4/1. Andersen thanked McCausland for appearing and advised him that he would receive a letter from the township to deny his appeal.

**9. Open Public Hearing for Appeal ZBA 2021-06 Turek**

1. **Variance on parcel #05-14-326-008-05 located at 1305 Bay View Drive**

The property owner is seeking a rear yard setback variance

Kopriva summarized the applicant’s request and stated we have no support that the former ZA approved permit, and no permit was granted by the township at the time EGLE inspected the property for permitting in critical dunes.

1. **Presentation by applicant Howard Turek**

Turek introduced himself, his wife, his architect, builder, engineer and lawyer. Turek summarized his coming to Torch Lake Township and the nature and history of his request and discussed the process of obtainment of his permit from EGLE. Turek presented all permits from EGLE, Soil Erosion and Health Department - He also discussed correspondences to and from the former Zoning Administrator (Graber) that indicated to him he was in conformance with zoning, and gave assurances, the only reason she couldn’t approve a permit is because Turek’s were not yet the owners of the property. Turek received the permit from EGLE - (that was the contingency for purchase).

Steve Voice - Voice Environmental addressed the board - gave history of his consulting and involvement with Tureks. Voice summarized what Critical Dunes means to this property. He reiterated the alleged implied approval of Graber, and the channels he went through to obtain the EGLE permit as well as Soil Erosion Permit.

Turek continued presentation. He discussed the easement and when it was established as well as critical dunes restrictions etc. He stated this very case was why variance hearings were established.

1. **Communications Received**

Letter from the Don Peterson Family in support of granting the variance was read by M. Petersen

1. **Public Comment**

Andy Graves - 1377 Bay View Drive spoke to the board in support with sympathy toward the applicant of granting the variance. He spoke of his own challenges on this road and experience with the ZBA in receiving a variance.

The board asked questions of the applicant

Tim Fisher - Architect- spoke to the board about the impossibility of moving/shifting the house from its planned location due to topography and restrictions of EGLE due to critical dunes.

Turek and Graves also spoke about the impossibility of moving the road.

Turek and Fisher explained to the ZBA exactly how far from the road the corner of the garage would be - Andersen asked Turek to clarify exactly how much of a variance he is requesting.

**10. Close public hearing for ZBA 2021-06 Turek**

Andersen closed the public hearing

**11. Discussion of Variance Appeal ZBA 2021-06 Turek**

FINDING OF FACTS

1. The property is located in the R1 zoning district and is vacant
2. The property is located in a critical dune area and the applicant has obtained the EGLE permit for construction which severely limits the building envelope on this property.
3. The parcel is conforming as it meets the minimum size and width requirements
4. The road easement is 33 feet wide and the road is approx 12 feet wide and the applicant is requesting to build at a distance of 10.5 feet from road
5. An attached garage is commonly enjoyed by other property owners in the same zoning district
6. There is no ability to move the EGLE approved footprint

Andersen made a motion to accept the above as findings of fact; seconded by Petersen. Andersen called for further discussion and roll call vote 4/0 motion carried.

Andersen led the members into discussion of the four criteria outlined in Chapter 20 for hearing variances.

Andersen 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. -supported by fact #2 the members agreed that this request meets the criteria.
2. 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. - supported by facts #2, #5 and #6, the members agreed that this request meets the criteria.
3. That the special conditions or circumstances do not result from the actions of the applicant. - the members agreed that this request meets the criteria.
4. 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 agreed that this request meets the criteria.

Motion by Andersen that the above criteria have all been met and the variance for ZBA #2021-06 shall be approved; seconded by Nussdorfer. Andersen asked for further comment and conducted a roll call vote; 4/0 motion passed.

Andersen informed Turek the township will follow up with a formal letter of approval.

**12. Approval of November 2, 2021 Meeting Minutes**

M/S D. NUSSDORFER /Petersen to approve as presented; 5/0 passed

**13. Communications Received Not pertaining to hearings -** None

**14. Public Comment not pertaining to hearings -** None

**15. Miscellaneous Business**

1. **Report of matters of interest to ZBA from the Planning Commission -** none
2. **Zoning Administrator’s Report** -presented in packet
3. **Amend Bylaws and Establish 2022 Regular Meeting Dates**

M/S - Nussdorfer/Andersen to approve changes to the bylaws to move meetings to 3rd Wednesday; 5/0 passed

M/S - Andersen/Nussdorfer to approve the 2022 Meeting Date Schedule as presented; 5/0 passed

**16. Summary of Action items to be taken on or before the next ZBA Meeting December 8, 2021**

Petersen comments that emergency vehicles on Bay View are a large concern to her, especially going forward and when lots to the south are developed and more homes are built. She would like to see a note in the newsletter sent with the tax bills which asks landowners to assess their property for emergency vehicle access.

Andersen comments that she’d like to see the information regarding signs (REFERENCE TO EASTPORT MARKET) is passed on to the PC for the ordinance rewrite and that Kopriva discuss with Steering committee when this chapter is rewritten.

**17. Adjournment 10:15 pm**

Nussdorfer made a motion to adjourn seconded by Andersen. Andersen called for further discussion and vote passing 5/0