EMMET COUNTY ZONING BOARD OF APPEALS
TUESDAY, MAY 21, 2019
EMMET COUNTY BUILDING
COMMISSIONERS’ ROOM
200 DIVISION STREET
PETOSKEY, MI 49770

MEMBERS PRESENT: B. ALEXANDER, M. BUDAY, T. DRIER, B. BATES, J. MALOTT

ALTERNATE MEMBER PRESENT: J. JONES

MEMBER ABSENT: NONE

STAFF: T. DOERNENBURG. M. LINEHAN

I. Call to Order and Attendance
Chairman Alexander called the meeting to order at 6:00 PM. All members were present.

II. Minutes of April 23, 2019
Malott made a motion to approve the April 23, 2019 minutes as presented. The motion was seconded by Bates and passed by unanimous voice vote of the members.

III. Cases

1. CASE #PZBA19-002 Patrice Carlson for Johnson Trust Company, SETBACK VARIANCES & EXPANSION OF NON-CONFORMING USE, 6151 Graham Rd, Section 19, Springvale Township
Legal Notice: A request by Patrice Carlson for Johnson Trust Company for setback variances and expansion of a non-conforming use at 6151 Graham Rd, Section 19, Springvale Township. The property is zoned RR Recreational Residential and is tax parcel number 24-14-17-19-301-026. The request is for a front yard setback waiver (40 ft. setback variance) and a waterfront setback variance of up to 34 feet to allow a second story addition to the existing non-conforming residential accessory building. The reviews are per Articles 23 and 25 of the Zoning Ordinance.

Doernenburg reported that the applicant took this case to the township who recommended denial. They requested postponement to give them time to further evaluate their request and site plan.

2. CASE #PZBA19-004 Jack Turner for Bossingham Resort Association, WATERFRONT & FRONT YARD SETBACK VARIANCES, 4700 Oden Rd, Section 17, Littlefield Township
Legal Notice: A request by Jack Turner for Bossingham Resort Association for setback variances to allow a mobile home to exist at its current location at 4700 Oden Rd, Section 17, Littlefield Township. The property is zoned RR Recreational Residential and is tax parcel number 24-07-17-17-451-017. The request is for a front yard setback variance of 32.8 feet and a waterfront setback variance of up to 55 feet from a canal. The variance request includes review of tax parcel 24-07-17-17-451-037, owned by Jane Kinsman Bell and James Bell, as the boundaries of the property would be modified to accommodate the existing mobile home. The mobile home is currently located 7.2 feet from the platted/unimproved road Willard Street (proposed to be partially abandoned) and 5 feet from the canal from
Crooked Lake to an adjacent property. The original mobile home on the property was a non-conforming structure as to location. The reviews are per Articles 23 & 25 of the Zoning Ordinance.

Packet items: Request & location map, tax parcel map, application, letter from Jack Turner explaining request with attachments, 5/2/19 letter from Marshon Kay Erickson, 5/8/19 zoning evaluation, Littlefield Township Board and Planning Committee recommendations, various past surveys.

Doernenburg presented this case. The property is located near a site on Pangbuin Street that was reviewed by this board last year. During that case, the Bells came in looking for a variance in order to be able to split their property. That variance was approved contingent upon the mobile home in question tonight coming into compliance as it is not theirs but is on their lot. Bossingham Resort Association owns the larger parcel shown and the Bells, the smaller parcel next to it. The aerial of the properties was shown. The mobile home is situated on two public platted roads; Meeker and Willard. It is completely located on the Bell property and these platted roads. The current proposal is to abandon and vacate portions of the platted roads. This would eliminate the public ownership situation with the roads. The other part of the request is to move the lot line so that the Bossingham Resort parcel would include the trailer and eliminate the side yard setback issue. There are two issues with the proposal including the fact that there is five feet from the trailer to the canal that connects a lagoon and Crooked Lake. A waterfront setback of 60’ is required. In the front yard, the trailer is setback seven feet from the proposed location of the road right-of-way.

Doernenburg reported that the Littlefield Township Board reviewed the case (May 7, 2019) but neighbors hadn’t been notified at that time. Their Planning Committee also reviewed the case and recommended approval on the condition that the mobile home meet the westerly setback. The Township would give up Meeker which ends at the lake which means they have the right to first refusal. The resort would also be responsible for upkeep of the retaining wall. Plans, attachments, and photos of the site were shown.

Doernenburg noted that there were three surveys on the desks tonight that were submitted during the Bell’s case. The survey from 1972 shows a mobile home. It appears based on the 1990 and 2018 surveys that there were different trailers put on the site over the years in varying sizes. When the original trailer was removed, the non-conforming status would have been removed. No permits for the replacement trailers can be found. The minimum square footage standard for a permanent dwelling is 720 square feet, which the original trailer would not have met. It currently meets that standard, but does not meet the minimum width for a dwelling in the RR zoning district. The Bell parcel is currently zoned RR Recreational Residential and the Bossingham parcel B-2 General Business. If there are changes made tonight the zoning district boundaries will not change. Waterfront setback standards in a residential zone are 60’ and are 25’ in a B-2 zone. The request to look at tonight is to allow the mobile home to exist at its current location, which would require an approval of the waterfront and front yard setback variances, and approval of the lot splits.

Jack Turner, representative for the applicant, and Dave Carlson, member of the Bossingham Resort were present for this case.

Jack Turner stated that this goes back a long time. The trailer was originally placed back in the 1960s; no one really knows when or why. He has been a lawyer for over 35 years and stated that usually property line issues are from people not being attentive or knowing where the boundary lines are. These platted roads were never paved and they may not have had much of a sense of where everything was. He understands that the trailer has been changed out a couple of times but doesn’t think that it has changed.
since Bossingham Resort Association was formed in 2003. The association owns the land and each member
owns a share of stock in the association and uses the cabins. He stated that he doesn’t think that anyone
there has any idea of where the trailer or the cabins are located. This issue really wouldn’t have come up
except for the Bells application to split their property. The neighboring property is owned by Jane and Jim
Bell who are siblings. They each wanted to own their own parcel with their own cabin on it and during their
review process the paperwork showed that this trailer is located in the wrong spot. During their ZBA case,
the approval was granted as long as this issue was fixed. The Bells and the Bossingham association have
come up with a resolution to fix this issue but it does depend upon the variances being granted because the
setback standards aren’t satisfied. Turner pointed out an area on the map that is owned by MDOT. He
noted that it is a wet area. The canal is a manmade canal on the side of the trailer. The lady across the
channel has sent in a letter of support. Turner stated that he has met with the township three times now.
They all realized that the mobile home has been here for a long time and the neighbors are in agreement
with the proposal. The Township doesn’t want to get involved with the roads. This is the most
straightforward way to deal with this situation.

Alexander stated that when the Bells were looking to split their property, the trailer was to be removed
from the property. Ms. Bell just wants this resolved so that she can split her property. It is nice that she
wants to work with the association but it doesn’t remove the issue that this trailer is still on her property.
The smaller trailer has been replaced several times without anyone asking any questions or gaining permits
on any of it. Even without knowing that it is on the Bell property, it still definitely encroaches onto the
right-of-way. There remain huge questions as to how it got there. It has been here a long time and zoning
has been here for a long time as well. This is the time to clear things up. Even though it is not the lake, the
trailer is only 5’ from the canal. Doernenburg noted the approval motion for the Bell ZBA review was on
condition that the mobile home be removed.

Turner stated that it would be a solution to say that the trailer has to be removed but he is not sure who
benefits from that. It will be costly to the association members to do so. Alexander stated that this board
needs to represent the whole county as well as these owners. It’s a sticky situation because they are
looking for a variance to the rules that everyone in the county has to live by. Turner stated that he
understands that there are issues, he has sat on ZBA boards in other areas. He stated that if you look at
substantial justice, both to the applicant and to the county, this has been there a long time and would have
never satisfied setback standards. How are the people in the county better off by this trailer being
removed? Alexander stated that the vast majority of ZBA case applicants would state that it doesn’t really
hurt anyone. This is one of the points that they look at but there are others as well. Turner stated that if
he was coming in to ask for a 5’ setback variance to build a bigger house it would be a different case. No
one else is going to come back and ask for the same thing that is being asked for in this case. Alexander
stated that usually when someone finds out that there is an encroachment on their property they have it
removed. This is a unique situation but it doesn’t change the fact that it is in violation and it was replaced
at least one other time. Turner stated that Bossingham Resort didn’t create this issue, they inherited it.
Alexander stated that this may be the case but they obviously didn’t look very closely at what they were
getting into. Malott agreed; they should have looked into it. Turner stated that he always suggests to his
clients that they have a survey done but people just don’t do it. He sees this a lot. This could have been
fixed with a survey but this didn’t happen. Alexander stated that this is a time where an issue can be
improved upon. The board has to look at the existing zoning ordinance and what is there and decide if this
is what we want to remain. Turner stated that there are a lot of non-conforming uses in the county, they will eventually go away. Malott stated that they won’t if the trailers are continually changed out. Turner stated that he suggests that this is in the best interest of the county and the owners to maintain the status quo and let this remain. Alexander stated that when you don’t check on things, you inherit the issues. Turner stated that the standard is that the applicant actively created the situation. He doesn’t think that this would be how the law would read. The resolution would allow the parties to avoid going to court.

Jones noted that because there is a full board, he will not vote tonight. He stated that he is upset that the trailer is five feet from the edge of the water. We have never granted this type of variance. Our water in the lakes is very important. He can’t believe that people moved the trailer there not knowing what they were doing; they knew what they were doing. The last replacement trailer was sometime between 1990 and 2018. Someone there had to know that the roads were dedicated. You don’t just own a piece of property and not know where the boundaries are. The closeness to the water is what bothers him the most.

Drier asked about the statement in the description noting that the highlighted areas of Meeker Avenue and Willard Street on attachment #5 need to be vacated. These are changes to the subdivision plat that need to occur. The township has said that they are in favor but the process for vacating and abandonment has not occurred yet. Perhaps this case is here too soon. Turner stated that the process of amending the plat requires a Circuit Court complaint which includes notifications to the township, county, neighbors, etc. They did not want to move forward with this process if a variance wouldn’t be granted. Alexander stated that an approval could be contingent upon getting these abandonments. Turner stated that the plat needs to be amended in order to exchange property. Drier noted that she’s been going to Road Commission meetings for a while and while some have been approved, some have not.

Buday asked if it was a requirement with the Bell approval that the trailer be removed. Alexander stated that in order to approve their variance, yes. Buday stated that he has a bit of a problem allowing this to remain as we are creating two variances. He stated that he feels that it is self-inflicted as it has been there but it also has been changed a couple of times. Permits are required for this and it wasn’t done. He noted that he was on site and noticed that it appeared that the electrical service just went to the boathouse and then to an adjacent house underground. The wire is exposed. It then goes through the air to another cottage. It appears to feed three buildings. This is very dangerous. Doernenburg noted that there have been at least two electrical permits issued to a contractor to separate the services.

Bates asked if anyone lives in this trailer. Turner stated it is a vacation home. It is partially owned by the nine members. Those members have rights to a specific structure. Bates stated that he wanted to make sure it wasn’t a groundskeeper who lived there all year. It functions the same as the cottages. He asked if this dwelling needs to have permits even if it is a mobile home? Doernenburg replied, yes. Bates asked if the Bells are members of the association. Turner replied, no. Bates asked who requested the surveys that are on our desk. Doernenburg stated that they were provided to us by the applicant when the Bell case was being reviewed. Bates stated that in each survey Meeker is designated, the trailer size grows, and it clearly shows that it is not on the correct lot. Did the association have access to these surveys in 2003 when they were formed? Turner stated that he doesn’t know. Bates stated that he shares the concern about the five feet distance from the water. He is concerned that someone is purchasing mobile homes and replacing them. This is clearly an ongoing issue. There are more surveys here than most properties.
ever have. Turner stated that these surveys are not of the Bossingham property, they are of the Bell property. If they were ordered by the Bossingham association, the survey would include their property. David Carlson stated that the association didn’t exist until 2003. He doesn’t think that the Bells are members.

Malott asked if we do something with this case today, will it negate our previous approval? Alexander stated that he doesn’t think so. It resolves the issue. We thought at the time that the mobile home would be removed. The original motion did say that the mobile home is to be removed. No other option was looked at during that process. This trailer was never on the Bossingham property so when that property was bought by them, the trailer wasn’t included. He also has an issue with vacating a street that has water access by plopping the trailer down. Turner stated that they did take the request to the public through the township and the township is fine with it. There is public access up the street. The question of whether it should be public access is done through Circuit Court. Plenty of people will get those notices and will have the right to voice their opinion about the street changes. Malott asked if the procedure has been done to vacate the street. Turner stated that it has not at this point.

Bates asked how we can look at this application using Bossingham as the applicant if it is not on their property. Doernenburg stated that both owners (Bossingham and Bell) signed off on this application.

Drier asked whose name is on the title of the trailer. Turner stated that it is owned by the resort. Drier stated that someone has purchased the upgraded trailers; was this the association? Turner stated that it hasn’t been upgraded since the association was formed in 2003. Bates stated that the trailer doesn’t belong to them because it is not on their property. It won’t be on their property until the land is sold to them. Turner stated that a lot of times people build houses mistakenly on someone else’s property. They still own the house. They end up in lawsuits usually but they are trying to avoid this by cooperating with each other. It has been there for 50 years. Bates stated that it has been there illegally for that time. Alexander stated that now is the time to address the issue.

Buday stated that another solution would be removing the trailer and replace with a smaller structure similar to the cabins that are there now that wouldn’t require such huge variances especially at the water. Some of these issues could be mitigated. Turner stated that he doesn’t think anymore building would be approvable on this site. Doernenburg stated that variances would still be needed. Buday asked if RR zoned properties will allow for an association. Doernenburg stated that tourist lodging is not allowed in RR zoning districts on properties of this size. Buday stated that in that case, we would be creating a third variance for the use on the property. Doernenburg added that a mobile home of that size would not be allowed in an RR zoning district either (building width). Turner stated that they are not making money, how is this tourist lodging? Buday stated that they paid something for it. Turner stated it is not a business. Dave Carlson stated that they don’t share the cabins with each other. It is set up as a corporation but each owner is the only person with access to a particular cabin. If they were not looking at a corporate structure, you would just think that everyone owned each cabin. Alexander stated that he occasionally sees for sale signs so they must be sold occasionally. Carlson stated that the trailer hasn’t changed since 2003. Prior to that would have been with the previous owner.

Malott stated that he presumes that these cabins and trailer are all hooked up to city sewer and water? Carlson said it’s sewer only and they have an artesian well. Malott asked since the trailer has been changed
out many times, is it connected to the sewer?

Bates asked Doernenburg about the trailer size. She had stated that it would not be allowed in the RR zone at this size. Doernenburg stated that when it was put there it would have met the standards for the size and width, but the current ordinance states that it needs to be at least 20’ wide and 20’ for at least half of its length. The square footage isn’t an issue since it’s a seasonal dwelling but the width would be. This was changed in 2015.

Malott asked what happens if we deny this proposal. Are the Bells obligated to remove the trailer? Alexander stated that they would be if they want to split their property. Jones stated that the Bells wouldn’t be responsible, the association would be.

Drier stated that the approval wasn’t to have the trailer conform, it was to be removed. Now we are trying to get it to conform to this space.

Alexander stated that we asked the question a few times during the last review as to how this would happen and Ms. Bell said she was working towards deeding the property over with an attorney. The Bossingham Resort would like this to go away but it didn’t. This started off to remove the trailer and split the property. He has no issue looking at the motion and feels that we can still proceed. This would have multiple conditions if approved.

Bates read the history of this issue from the enforcement report. His concern with much of this is that there are nine units functioning on their own and although the owners are not required to be here, they don’t seem to be taking an active role in this or have responded per the report. This provides a window into how we’ve gotten here.

David Carlson stated that he hasn’t met the person that owns the share in the trailer but understands she is an elderly lady. They don’t ever come up after Labor Day. He isn’t sure how they would even be contacted. Doernenburg clarified that when she says owner in the report, she means Bossingham Resort Association. Turner stated that he was the attorney that responded to these letters. He had been working on this for quite a while. He stated that he feels uncomfortable having the report read like this. Nothing moves along as fast as we want. Everyone is seriously interested in getting this resolved and are working towards this. As human beings we try to think about what others are thinking and what their motives are. It is pretty hard to figure out what is going on in others’ heads. Alexander stated that they should have let the county know what was going on instead of not replying to them. Turner stated that they have no idea what they were thinking when these trailers were put in and when they were changed. Bossingham hasn’t changed the trailers and they haven’t created this problem.

Malott stated that he is prepared to make a motion to deny as there are far too many questions and issues that cannot be solved with this variance request.

Malott made a motion to deny PZBA19-004 Jack Turner for Bossingham Resort Association and Jane Bell, for the variances necessary to allow the mobile home at 4700 Oden Road to remain at its current location, 5 feet from the canal between Crooked Lake and the lagoon to the west of the property, and 7.2 feet from the modified lot line proposed on the site plan and application packet received April 22, 2019. The property includes tax parcels 24-07-17-451 -037 (4653 Pangbuin St) and 451-017 (4700

Emmet County Zoning Board of Appeals Meeting Minutes  05/21/2019
Oden Rd) located within Section 17, Littlefield Township. The reason for the denial is because all four standards for approval of a dimensional variance have not been met. Eight dwellings exist on the property without the mobile home, and the mobile home does not comply with RR zoning district standards.

Doernenburg suggested that the four standards of the dimensional variance be discussed individually before voting on the motion.

Alexander went through those standards. 1) Practical difficulty: The issue was inherited by the applicant but the trailer is totally inside someone else’s property and in the road rights-of-way. 2) Strict compliance would unreasonably prevent use: There are eight other dwellings there and the parcel is not that large. 3) Request is minimum variance necessary for substantial justice: This is not a minimal variance request. A 60’ waterfront setback requirement is being requested to be changed to a 5’ setback which is well beyond what this board would grant. Alexander stated that we may be able to look at the front yard request but not the water. 4) Adverse impact on surrounding properties: Alexander stated that once people look at the request and the lack of water access they will realize the adverse impact.

After the discussion, Drier supported the motion to deny. The motion passed on the following roll-call vote: Yes: Drier, Malott, Alexander, Bates, Buday. No: None.

Jones stated that when the association was created this became a self-created issue. Bates stated that the association must be a legal way for them to jointly own multiple buildings; a creative workaround. This property could never be divided. Buday stated that when the association was created they would have done a survey of the property. Bates stated that for the record, the decision wasn’t based on that issue, rather the facts as presented weren’t in their favor. He asked if this would be the same situation if it were a house with a foundation. Consensus was that it would be the same.

IV. Public Comments: None

V. Other Business:
   • Bylaws were passed out a while ago. Will be put on the agenda for review at the next meeting.
   • Enforcement Report: Distributed with some discussion.

VI. Adjournment:
Alexander called the meeting adjourned at 7:30 PM.

Minutes Certification:

__________________________________________  Date
Mark Buday, Secretary