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

ALTERNATE MEMBER PRESENT: C. LIVELY (Alternate Member)

MEMBER ABSENT: NONE

STAFF: T. DOERNENBURG, N. SALAR, 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 September 17, 2019
Drier motioned approval of the September 17, 2019 minutes as presented. The motion was seconded by Buday and passed by unanimous voice vote of the members.
Alexander wanted to note that on page eight of the minutes there was a comment made by Bates: Bates stated that he feels that if the house were smaller and on a cheaper lake it would be looked at differently. This is a massive property on an expensive lake that owners are dumping money into. He stated that he feels that this isn’t emotionally appealing. He thinks it would be approved somewhere else. He is trying to keep finances out of his decisions both positive and negative. Alexander wanted it on record that the ZBA has not and does not show partiality or prejudices for any reason. They should not and hopefully never will. Bates stated that he is fully aware that cost is not the basis for decisions.

III. Cases
   1. Case #PZBA19-014 Wayne Shotwell for Belle Tire, HEIGHT VARIANCE-Flagpole, 2150 Anderson Rd, Section 18, Bear Creek Township

   Legal Notice: A request by Wayne Shotwell for Belle Tire for a variance to the height of a flagpole located at 2150 Anderson Rd, Section 18, Bear Creek Township. The property is zoned R-1 One & Two Family Residential with a Consent Judgment regulating the land use. The property is tax parcel 24-01-19-18-100-058 and is owned by National Retail Properties LP. The request is to allow a 60' high flagpole where 30' maximum is permitted. The review will be per Section 22.07 and Articles 19 & 25 of the Zoning Ordinance.

   Packet Items: Request & location map, tax parcel map, application, letter from applicant, email from Debbie & Mike Sears, Record of phone call from Linda Leech, zoning permit, PUD agreement, consent judgment, case history of request for flagpole variance, zoning evaluation, letter from Haggard’s P&H
Doernenburg showed the location of the property on a PowerPoint presentation noting that it is part of a larger PUD which is under consent judgment. The PUD boundaries were pointed out and the location of this specific parcel was shown. The consent judgment allows for staff review of site plans and therefore they do not go to the Planning Commission for review. This site was approved for the building, the parking lot, and the outdoor lighting. The permit that was issued noted that the flagpole was not part of the approval. During the inspection for the Certificate of Occupancy, it was noted that the flagpole had been installed and was over the maximum height allowed. The applicants had the option to either reduce the flagpole height or to apply for a variance to this board. Doernenburg noted that the review should be as though the flagpole is not there. The flagpole is setback over 650’ from Anderson Rd, over 850’ from Lears Rd, over 1,400’ from US 131 Hwy, and 450’ from Cemetery Rd. Included in the packet was case information from another variance request for a taller flagpole that was approved for Dave Kring at 45’ tall. This was approved on that site due to the large site area and deep use setbacks. The Kring location is considerably closer to the highway than this case. Two comments were received from individuals on Cemetery Road in support of this request. The surrounding uses are primarily commercial with residences across Cemetery Road. The ordinance standards for height were included in the packet. There are some exemptions but flagpoles are not one of them. The site plan and photos of the site were shown. Doernenburg noted that if the ZBA voted in favor of the request the flagpole could remain in place, if not, it would have to be removed.

Wayne Shotwell, Belle Tire stated that when they decided to come to Petoskey with their store they were in a unique situation as they normally only have to go to one municipality for review. Here they had to go through Petoskey Township* and the County. The architect missed where the flagpole had to be installed in accordance with County standards and they thought it was approved when the building plans were approved through Petoskey Township.* He explained that the owner of Belle Tire is very, very passionate about three things; 1) their people and providing high end health insurance for them and their families, 2) the Country and Veterans. They spend a lot of money on their flags maintaining them and the poles that are at all of their stores. There is a quarterly program in place to change out flags. They are the same size at all of their stores and get recycled through their stores. 3) Customer service; they take great pride in customer service and providing affordable tires and service for all customers. Shotwell stated that they have these flags at every one of their stores and haven’t been challenged in the 14 years that he has been with them. They have never had an issue with the US flag.

Alexander asked Shotwell if he is saying that no one has had an ordinance in terms of height for flagpoles in any of the areas that they have stores. Shotwell stated no. He noted that one community in Indiana asked if they wanted to put up a larger one. This is the only variance from the norm at any of their 117 stores. Alexander stated that he is as patriotic as anyone and was drafted out of college. The question tonight is on the flagpole height itself. The flag does bring attention to the store. We all stand and enjoy the flag but he does have concerns about potential noise of that large of a flag. He stated that he used to have a hotel up in Mackinaw City and they
didn’t go to a larger flag specifically because of the noise issues. He stated that there are two people on Cemetery Road who are in support but the noise can be an issue when winds are strong. Shotwell stated that normally when there are high winds the stores are instructed to take down the flags. They haven’t had any situations with issues from noise or any accidents with their flagpoles.

Bates stated that he is in this area almost daily. He has read the ordinance carefully. This is only about the flagpole height and has nothing to do with the flag itself. He noted that his business installed a flag this year and wanted to go bigger but had to follow the ordinance. It is black and white to him that the flagpole should be at 30’.

Malott asked Shotwell if their entire store inventory has this flag. Shotwell stated yes. Malott stated that it may not have started as signage when they began this, but it is pretty ingenious. He asked if it is lit at night. Shotwell stated it is. Doernenburg stated that the ordinance does not allow flags to be lit from the ground; they would have to be lit from the top of the pole or the side of the building. Shotwell stated that it has to be lit per flag protocol. Bates stated that the lights are shown on the ground lighting up on the print. This would be against the ordinance. Doernenburg agreed that it would be a zoning violation.

Buday stated that he also thinks this is a black and white issue. The ordinance states that the height must comply. This flagpole exceeds the height standard and falls into the self-created hardship category.

Drier stated that she wonders about a minor modification. She asked Shotwell if he is going on record that all 117 stores have this size flagpole/flag. Shotwell said yes.

Shotwell stated that they were not aware of the issues with the lights. They should be able to modify the lighting if this is approved. There are a number of lighting options.

Alexander explained that Craig Lively is an alternate member and would not vote tonight as all members are present but Lively can still participate in the discussion.

Lively asked if there are other flagpoles in Emmet County that are higher than 45’. The Odawa flag was mentioned but this is not under County jurisdiction. Doernenburg stated that there may be. Lively stated that he passed four that he thinks are over that height.

Doernenburg stated that the last variance request for the flagpole height utilized sign variance standards such as deep use setback and large site area. Bates noted that the minutes also stated that that flag was lower than the highway. Lively asked if a 30’ flagpole could be installed on a 10’ hill and be fine. Doernenburg replied that grades can be modified. Shotwell stated that their flag sizes are 20x30’ and cannot be flown from a 30’ flagpole. Drier asked if they ever fly any other flags from their poles. Bates reminded her that we cannot regulate the flag itself. Shotwell stated that they do not fly anything other than the US flag. The only exception to the flag size is if there
are trees or buildings in the way when the flag has to be flown at half-staff. They then use a smaller flag to avoid any issues during that time.

Alexander stated that the issue is that the flagpole was installed. The fact that the architect didn’t realize that there were height regulations does not relieve you from the responsibility. You are requesting a lot of relief. He stated that most businesses want a flagpole and many have likely wanted to put in a taller flagpole but have not done so because they reviewed the ordinance standards that put the maximum height at 30’. It comes down to meeting ordinance criteria. There are alternatives, there are no issues with still doing business there with a shorter flagpole/smaller flag. He noted that he drove back out to the site tonight. It does appear to set a little lower but is still well above the buildings and stands out. The intention is that flags should not be used as signage but this definitively brings attention to the store. No one else has one at this height.

Doernenburg noted that when Shotwell was originally speaking he mentioned Petoskey Township. She wanted to note that it is in fact Bear Creek Township*.

Alexander opened the floor to public comment.

Jason Sackrider, McBride Construction, asked what the reasons for the approval of the higher flagpole at Dave Kring. Doernenburg read the reasons from the motion.

Shotwell asked if they would be considered a deep-use setback. They are back far and the road goes down a way to them. Is the dealership as far back as we are? Doernenburg replied, no.

Bates made a motion to deny Case #PZBA19-014, a request by Wayne Shotwell for Belle Tire for a variance to the height of a flagpole located at 2150 Anderson Rd, Section 18, Bear Creek Township. The property is zoned R-1 One & Two Family Residential with a Consent Judgment regulating the land use. The property is tax parcel 24-01-19-18-100-058 and is owned by National Retail Properties LP, based on the facts in the case and because the proposed flagpole height is 60’ and Section 22.07.7 requires the height to not exceed 30’. The motion was supported by Buday.

Doernenburg noted that it is important to have clear reasons for the denial in the motion. She suggested reviewing the reasons for approving a sign variance which includes deep use setback and large setback area. Alexander added that it has to be shown that there isn’t a reason to grant the requested variance.

Bates modified his motion to the following: a motion to deny Case #PZBA19-014, a request by Wayne Shotwell for Belle Tire for a variance to the height of a flagpole located at 2150 Anderson Rd, Section 18, Bear Creek Township. The property is zoned R-1 One & Two Family Residential with a Consent Judgment regulating the land use. The property is tax parcel 24-01-19-18-100-058 and is owned by National Retail Properties LP, based on the facts in the case, Section 22.07.7 limits flagpole height to not exceed 30’ and because the applicant has not demonstrated a need for a
variance based on Section 22.07.11 B. The revised motion was supported by Buday.

Lively asked if the lighting needs to be included in the motion. Doernenburg stated that it is a separate issue that doesn’t have anything to do with the flagpole height. He asked if we were reviewing a variance for a lighted sign would it be part of the sign. Doernenburg stated yes, if it was in relation to the case.

The revised motion passed on the following roll-call vote: Yes: Alexander, Bates, Buday. No: Drier, Malott.

Alexander advised Shotwell that the case was denied but the ordinance does state that three 30’ flagpoles can be on the site; this may be something to look into. Shotwell asked if there was a way to appeal this decision. Doernenburg explained it would be through Circuit Court.

2. Case #PZBA19-015 McBride Remodeling for Matthew & Lissie Canzono, SIDE YARD SETBACK VARIANCE, 4972 Lower Shore Dr, Section 30, Friendship Township

Legal Notice: A request by McBride Remodeling for Matthew and Lissie Canzono for a side yard setback variance of up to five feet to apply to an addition to a residence at 4972 Lower Shore Dr located in section 30 of Friendship Township. The property is tax parcel 24-06-12-30-325-015 and is zoned SR Scenic Resource and RR Recreational Residential. The SR zoning district extends 400 feet from Lower Shore Dr toward Lake Michigan, the remainder of the property toward the west is zoned RR. The request is per Article 25 of the Zoning Ordinance and would allow the addition within ten feet from the side property line.

Packet Items: Request & location map, tax parcel map, application, letter from applicant, zoning ordinance excerpt - Article 7 & 19, letter from Marty & Cheryl Zofchak, photos of site, zoning evaluation, 10/19/19 site plan & floor plans, letter from Haggard’s P&H

Salar presented this case with a PowerPoint. The location of the property was pointed out. It is located on the lakeside of Lower Shore Drive. The parcel is zoned both SR and RR but the area that is in review is completely within the SR District. The request is for a side yard setback variance of 5’ to add an addition to the south side of the house 10’ from the property line. She explained that the setback required in SR is 15’. There is a discrepancy in the ordinance that shows the side setback at 10’ which is what the plans were drawn based on. The site plan was shown as well as photos of the site. There are two platted lots with four PID numbers which are all used as one zoning lot. The parcel is in two townships but we are only looking at the section located in Friendship Township. One letter of support from a neighbor on the affected side has been received. The township has recommended approval.

Matthew Canzono, owner, stated that when they put in an offer on this property the land was in disarray and the hill and forest had been decimated by the previous owner who had planned to build two houses. They had intended originally to build near the lake but during the research process and planning, they fell in love with the existing house where it sits. It is a charming A-frame atop the hill. This property is a place for them to come and retire and they needed a bit more room if they were to keep this house. He stated that he played with a lot of drawings and
came up with a design based off of what they knew and his wife’s research into setback requirements. They made plans and spent a lot of money refurbishing the house. They have remodeled 90% of the interior, installed new windows, painted, and were hoping to add the addition. They found out afterwards that there are two spots that list the side setback standards for the SR district. They had plans drawn up based on the 10’ that they saw in the ordinance. They are not blocking any scenic views and meet the spirit of the ordinance.

Alexander stated that understanding there is a misprint in the ordinance, he does see a comment in their application stating that they are unable to change their plans for the addition. Are the eaves figured into this? Paul Drayer, McBride Remodeling, stated that the site plan shows the walls only and the eaves would be in addition to this. The vertical circulation is on that side of the house. If it were moved around, they would basically be locked out of that side of the house. The intent for the addition is to add a master suite. Alexander asked if the addition was planned when they were doing the remodeling. Canzono stated that they always knew that they’d be putting in a master suite and knew this was the side of the house that they planned to use. He stated that Tom Gallagher did a great job on the landscaping and putting it back together. The whole house would have to be reconfigured if it were changed around. Alexander stated that the application packet noted that there were variances given to neighbors in the past. Canzono stated that the neighbor to the north received a side yard setback variance. The other neighbor has sent in a letter of support. Lissie Canzono stated that the neighboring houses are at the lakeside not near where their house is on the hill. M. Canzono stated that he thinks the neighbors were all happy when they didn’t decide to build near the lake. Alexander asked Doernenburg if this case would need to be re-advertised due to the eave overhang? Doernenburg stated that eaves can extend into the setback on certain sized lots. Drayer stated that the eaves on the addition fall within the requested 10’ setback.

Buday asked if only one house could be built on this lot. Are you planning to build another house down below in the future? Doernenburg stated that because of the location of the existing house, unless they completely destroyed the house they couldn’t build another. Buday asked if they had any plans to build additions in the future. M. Canzono stated no.

Drier stated that she was unable to go to this site but the great photos helped. M. Canzono stated that he forgot to advise them there is a camera on the site for animals so he saw many of them come out.

Lively asked which part of the property is zoned SR and which is zoned RR. Doernenburg explained that SR district extends 400’ from the road right-of-way. She noted that the side yard setback in the RR district is 10’ and if they had called to ask if they could build by the water it would have been a 10’ setback requirement. She stated that there is an issue in the ordinance. There is a section that states that if there is a conflict, the stricter regulation would apply. This issue has since been corrected. Lively asked if the public had knowledge of this. Doernenburg stated that the applicant didn’t at the time of application and they relied on what they saw in the ordinance. Lively stated that he doesn’t see an issue with the request and understands the complications with the mechanicals being on that side of the house. If the house was 10’ lower they wouldn’t have this problem. He asked if this is a critical dune site. Doernenburg replied, no.
Lively stated that the addition isn’t close to the water and won’t have to worry about erosion. Drayer added that the owners have spent a lot of money to restore the house and re-build the property and the hill.

Malott stated that he is supportive of this request.

Bates stated that he has no questions or concerns.

Alexander stated that after being at the property, he wouldn’t want to be down by the water given the great view they have. He stated that sometimes we require easements from the neighbors in cases like this to make sure houses still keep minimum setbacks between them. In this case the road is there and no one is going to build up by their house. He thinks this is in the right spot.

There was no public comment on this case.

Malott made a motion to approve PZBA19-015, a request by McBride Remodeling for Matthew and Lissie Canzono for a side yard setback variance of up to five feet to apply to an addition to a residence at 4972 Lower Shore Dr located in section 30 of Friendship Township as shown on the site plan dated Received Oct 18 2019. The property is tax parcel 24-06-12-30-325-015 and is zoned SR Scenic Resource and RR Recreational Residential. Approval is based on the facts presented in this case, the practical difficulty is a result of an error in the Zoning Ordinance, the variance request is consistent with the RR zoning district setback standards and is the minimum necessary to do substantial justice to the applicant and other property owners in the district, and it will not cause an adverse impact on surrounding property values, or the use and enjoyment of property in the neighborhood or zoning district and because the township has recommended approval. The motion was supported by Bates and passed on the following roll-call vote: Yes: Drier, Malott, Alexander, Bates, Buday. No: None.

IV. Public Comments:

V. Other Business:
- 2020 Meeting dates were reviewed with no objections.
- Doernenburg introduced Becky Pettenger who was in the audience. She explained that Becky does a lot of the prep work for these meetings including the PowerPoint presentation.
- There was some discussion regarding needing to have specific reasons in motions for approval or denial. Doernenburg stated that it is not enough to just state that they don’t meet ordinance standards. Bates stated that he realized about half-way through that Doernenburg was asking him to include more justified reasons. Doernenburg stated that this has been customary to allow in past motions but we do need to be more diligent with this in the future since ZBA decisions can be challenged in court. Past cases have even been challenged by a neighbor. Bates asked if it is proper to take notes on what items they’d like to see in a motion prior to the meeting. Doernenburg stated that it is and is encouraged. He asked if it would be appropriate to preface a motion with personal feelings about a case as some of these cases exist beyond this room. Doernenburg stated this is not appropriate. Bates stated that he wants to respect the process and make sure everything is above board.
- There was some discussion on the Open Meetings Act and correspondence between the
group. Alexander asked Doernenburg if there is a way to put more specific reasons into denial draft motions so that they can be more specific. Doernenburg stated that we can try to do that. Buday asked if it is appropriate to add on to another person’s motion. It is as long as the person making the motion agrees to add onto their motion.

Mark Drier stated that he believes that Bates’ comments in regards to his personal situation not being able to have a higher flagpole sent a bad message. Alexander stated that it was a logical argument because most people do not make ZBA requests because they look at the ordinance or ask questions and see that what they want is not allowed and make other plans. Bates stated that he does appreciate the feedback and made that statement as a statement of fact only.

- The 2018 Annual Report was passed out with little discussion.
- Enforcement Report: Distributed with some discussion.

VI. Adjournment:
Alexander called the meeting adjourned at 7:15 PM.

Minutes Certification:

Mark Buday, Secretary  
Date