EMMET COUNTY ZONING BOARD OF APPEALS  
TUESDAY, JANUARY 21, 2020  
EMMET COUNTY BUILDING  
COMMISSIONERS’ ROOM  
200 DIVISION STREET  
PETOSKEY, MI 49770

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

ALTERNATE MEMBER PRESENT: C. LIVELY (Alternate Member)

MEMBER ABSENT: NONE

STAFF: R. ENGEL, 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 November 19, 2019
Malott motioned approval of the November 19, 2019 minutes as presented. The motion was seconded by Buday and passed by unanimous voice vote of the members.

III. Election of Officers
As this is the first meeting of the year, election of officers positions was discussed. The current slate of officers is Chair-Alexander, Vice-Chair-Malott, and Secretary-Buday.

Drier made a motion supported by Buday to nominate Alexander as Chairperson. The motion passed by unanimous voice vote of the members.

Alexander made a motion supported by Bates to nominate Malott as Vice-Chairperson. The motion passed by unanimous voice vote of the members.

Drier made a motion supported by Malott to nominate Buday as Secretary. The motion passed by unanimous voice vote of the members.

Election results: Alexander, Chair; Malott, Vice-Chair; Buday, Secretary.
IV. Cases

1. Case #PZBA19-016 Chris Hampton (Springfield Sign) for Jacob Kendall-KS Michigan Real Estate LLC, SIGN VARIANCE

1264 N US 31 Hwy, Section 34, Bear Creek Township

Legal Notice: A request by Chris Hampton (Springfield Sign) for Jacob Kendall for a sign variance at 1264 US 31 North, Section 34, Bear Creek Township. The property is zoned B-2 General Business and is tax parcel 01-16-34-100-021. The request is to allow a second wall-mounted sign on the existing building. The review will be per Section 22.07 of the Zoning Ordinance.

Packet Items: Request & location map, tax parcel map, application, 11/25/19 letter from applicant, elevation-wall signs, site plan, location map with neighboring businesses pointed out, aerial, sign package proposal, email between Springfield Sign & Tammy Doernenburg, zoning evaluation.

Doernenburg presented this case. The location is the former Burger King restaurant on N US 31. It is being remodeled and will be a Culver’s restaurant. The property is zoned B-2. The request is for a sign variance in order to allow for a second wall-mounted sign on the west side of the building. The site plan was shown. Doernenburg explained that the sign on the north side, the freestanding sign, and two directional signs at each entrance have been administratively approved. The building is setback quite a bit from other uses on the highway. She noted that the square footage of the two signs combined is less than the maximum size allowed. The provisions regarding accessory signs were read. She pointed out that the lumber yard to the east has a very tall existing non-conforming sign as well as multiple wall mounted signs. The properties across the road on the corner lots could all have two signs; one on each side, due to their road frontage. Doernenburg noted that there is one sign on the site plan that was in the right-of-way which is going to be moved back to meet standards. The elevations and sign plans were shown. Photos of the site and the corridor showing multiple signage closer to the road were shown.

David Newland was present for Culver’s.

Alexander stated that he doesn’t have a lot of issues with this request however he wanted to note that some of the arguments for the sign in the applicants’ written statement felt far-fetched to him such as stating that the west bound view being blocked. He stated that the sign wouldn’t help if you were heading west. He asked if an entrance sign would be allowed. Doernenburg stated that a 3sf sign would be allowable. Alexander stated that he did look at surrounding businesses signage. The McDonald’s has their “M” on three sides of their building. He agreed that since they are remodeling the existing building, the distance is far from the highway and won’t change.

Buday stated that when he reads through the intent of this section (22.07), it speaks to traffic, visibility, and safety; this is not relative to this sign request. He is comfortable with the request and appreciates the clear signage to let you know where you’re going. It doesn’t work against any of the ordinance intents for this section.

Drier stated that she has no issues. She thought it was significant that both signs combined are well under the maximum square footage allowed.

Lively stated that he is thinking along the same lines as Buday. People going east on the highway often abruptly stop for businesses, perhaps signage will assist them in making a decision earlier to help traffic.
They do have a deep-use setback. He commended them for utilizing an existing building. Lively stated that he has no issues with this request.

Malott stated that this is going to be lit up like a Christmas tree; how many customers would they lose by not having this sign? Newland stated that he didn’t have an answer to that. Malott stated that he doesn’t have any issues with this request.

Bates stated he has no questions or concerns.

Doernenburg stated that she had a discussion with the builder regarding the outdoor lighting. She made sure that they knew the standards.

Alexander noted that this is a request for an additional sign over the door on a business facing the highway. It is so much under the maximum size allowed, it seems insignificant.

Drier asked if it would just say “Culver’s” on this sign. Newland affirmed. Alexander asked about the panel wall signs on the south side. Doernenburg stated that they are not regulated as they cannot be seen from the road.

There was no audience comment for this case.

Bates made a motion to approve Case #PZBA19-016, Chris Hampton for Jacob Kendall for a sign variance to allow a second wall mounted sign at 1264 US 31 North, Section 34, Bear Creek Township, tax parcel number 24-01-16-34-100-021 as shown on the site plan and ZBA application packet received Nov 5 2019, based on the facts presented in this case and because the two wall-mounted signs collectively meet the allowable area for wall-mounted signage based on Section 22.07.02.A.

Buday asked to add that the request doesn’t work against the intent of Section 22.07 of the Zoning Ordinance. Craig asked to add that there is a deep-use setback.

The full motion was supported by Buday and reads:

Bates motioned, Buday seconded, to approve Case #PZBA19-016, Chris Hampton for Jacob Kendall for a sign variance to allow a second wall mounted sign at 1264 US 31 North, Section 34, Bear Creek Township, tax parcel number 24-01-16-34-100-021 as shown on the site plan and ZBA application packet received Nov 5 2019, based on the facts presented in this case, because the two wall-mounted signs collectively meet the allowable area for wall-mounted signage based on Section 22.07.02.A, there is a deep-use setback, and because the request does not work against the intent of Section 22.07 of the Emmet County Zoning Ordinance. The motion passed on the following roll-call vote: Yes: Drier, Malott, Alexander, Bates, Buday. No: None. (Alternate member Lively did not vote as all regular board members were present.)

IV. Public Comments: None
V. Other Business:

- **Enforcement Report**: Distributed with some discussion. Doernenburg reported that the Belle Tire flagpole has been reduced to 30’ within the last week. They are working on lighting and correspondence has been sent to them regarding their sign panels on the free-standing signs which are supposed to be opaque but are not. There was some discussion at the end of the meeting as to how enforcement cases come into the office and whether it was acceptable to mention potential violations. Doernenburg stated that it is acceptable. She explained that they come in through various ways such as the public, the township, and staff noting violations.

- **Upcoming opportunities**: Doernenburg noted that there will be a presentation from Catherine Kaufman on March 31st at 6pm at the Littlefield Township hall. It will be on risk-management and further information will be sent out.

- **Presentation by Robert Engel**: Doernenburg stated that she had requested that Mr. Engel come in to have a general discussion regarding the recent case that was heard in Circuit Court as it will be reviewed by this board again per the judge’s ruling. Engel passed out text of the information that he was going to cover in this presentation. He explained that recently the Circuit Court reviewed a decision that was made by the ZBA on a case that originated as an enforcement case. He explained that during this hearing, the judge was not satisfied with the explanation in the motion of why the case was denied. He has remanded it back to this board for further review and clarification of the motion. He stated that the information that he is going over was set up in reference to this case which was a dimensional variance but the information can be applied to any type of variance review. Engel explained that the main issue that the judge had was that there was not enough clarity in the motion specific to the five standards that the ZBA reviews in a variance case. When this comes back to this board, they won’t be hearing new evidence or additional requests but rather will be listening to the arguments on both sides and make a decision all over again; including clearer reasons in the motion. Engel commended this board as well as the administration as very few ZBA cases are appealed to Circuit Court. He noted that even with all of the information on a case presented ahead of time, decisions still have to be made in a fairly quick manner during a meeting. Engel stated that he wanted to take some time to educate on some of the legal side of things. He explained that the Michigan Zoning Enabling Act dictates what the circuit court judge looks at when appeals come before them (MCL 125.3606). Item #2 discusses what happens when the court finds the record inadequate or finds that additional material evidence exists that with good reason was not presented. They can order further proceedings in which the ZBA can modify its findings and decision or may affirm its original decision. Engel stated that likely if the original decision was modified to an approval the second review would not happen as an appeal likely wouldn’t then be warranted. If it is still denied, the court would review again. They can then affirm, reverse, or modify this decision. He explained that in a criminal case, proof beyond a reasonable doubt is required (95% or better). In a civil case, one side’s argument just has to be a little bit better than the other (51% or better). With that in mind he stated that a court should give deference to the ZBA as long as there is good evidence. The court can send the case back to the ZBA if 1) the judge finds the record inadequate to make the review...
required or 2) if the judge finds that additional material evidence exists that was not presented. Rulings need to be based on what the majority of the evidence shows you. Engel cautioned to just make sure that there is evidence to support the decision and make sure that this is in the motion to grant or to deny. He noted that the motions state “on the facts presented in the case” typically. Which facts are you referring to? Was there one that stood out? Be specific on those facts. Each of the five review criteria should be spelled out in the motion as to that it supports or doesn’t support the request. Alexander asked if the discussion during the meeting on each of these points, the packet of information, and the site visits aren’t the “facts presented”. Engel stated that they are but the motions still need to be specific. For example, “this case failed to prove standard #3 for the following reasons…” Doernenburg noted that in this case the judge had the minutes. She stated that all of the review criteria was reviewed during the meeting but only by one person. They weren’t spelled out in the motion. Each requirement could be gone through during the motion. Doernenburg suggested going through the facts of the case, agreeing on the facts, and then going through each one of the criterion individually with reasons to approve or deny. All standards have to be met by the applicant in order for a variance to be approved. Buday stated that reasons for failure to prove criteria need to be given. Drier asked what happens if there are discrepancies on whether one of the criterion are met or not amongst the members. Engel stated that summaries of each person’s opinion can be given in the record. This will take a bit more work on everyone’s part. The motions that are written up in the staff report will have to be more concise. Bates stated that the zoning evaluation could be changed to become a standard part of the minutes. Doernenburg stated that even then the motion needs to clearly connect the standards of the ordinance with reasons for approval or denial. Alexander stated that if one of the criterion is not met, this would be a reason to deny. Engel stated that the reasons and facts that weren’t met in that case should be gone over. Lively asked if the reasons for dissention from a member needs to be in the motion as well. Engel stated that it should be in the record but not necessarily in the motion. Lively asked if this needs to be done with both approval and denial motions. Engel stated that it does. Likely an applicant wouldn’t appeal an approval motion but there may be neighbors that might. Doernenburg noted that this happened in the Village of Mackinaw City where the neighbor brought a ZBA decision to court. It is good practice and important to have this information. Alexander asked if the case being reviewed is coming back to this board in March as a regular case? Doernenburg stated that it would, a complete informational packet will be sent out. Engel stated that we are waiting on the judge’s order. He anticipates the order to likely be that the judge would want the ZBA to review the motion. This as well as the briefs will be included in the packet. Drier asked in the instance that a judge reversed the ZBA decision, why would we hear it again? Why wouldn’t the judge just grant the variance? Engel stated that this is the role of the ZBA so it would be sent back to this board to change the decision. Doernenburg stated that during the hearing she wrote down that the judge did not find adequate clarity in the motion related to the standards within the Zoning Ordinance; this is what he was looking for. Engel stated that there is no wrong decision as long as the standards are shown to be met or not met and the facts show this. There was no issue with the procedure in the case just need more clarification.
Another item to pay attention to is to be sure that the decision is a ‘reasonable exercise of discretion’ meaning to be sure that there is nothing to indicate that a ‘close-minded’ decision was made. Alexander noted that in any case someone can take exception to what anyone says and feel that it was close-minded. Bates stated that he feels that if every case we reviewed were black and white, it wouldn’t be here for review. Buday asked Doernenburg when the ordinance was updated. She stated that it was completely updated in October 2015. He stated that he appreciates the prescriptive nature of this ordinance as opposed to others he’s utilized. Bates asked if we need to have less discussion during meetings to avoid issues. Engel stated that he reads the minutes monthly and appreciates the discussion. He did state that members need to look at how their discussion and decisions could be looked at down the road. Doernenburg noted that she or the Chair would typically stop a discussion if it were out of the realm of the purview of the ZBA. Any member that feels a discussion is out of line could speak up and ask the chair to intervene if necessary. Bates stated that he is sometimes concerned because these meetings typically are smaller that perhaps there is more of a back-and-forth discussion that there would be in other types of meetings; more conversational. He would like to be sure that our credibility is maintained. Alexander stated that he doesn’t feel that there is an issue usually.

- **Flagpole ordinance:** Lively stated that he has been thinking about the ordinance in regards to flagpole heights and thinks that the ZBA should make a recommendation to the Planning Commission to review this section. He stated that a flag has been discussed as a type of signage. This should be more clearly defined. He stated that deep-use setback has been used in cases to approve higher flagpole heights; how does this work? Is it from the perspective of where it is on a site? This also seems subjective to him and should be further defined. Alexander noted that we aren’t reviewing flags themselves but rather the height of the pole. Lively stated that there may be cases in the future in which a deep-use setback may be an appropriate reason to approve a taller pole/larger flag. There are many in Traverse City that have larger flags. He doesn’t feel that they are advertisements per se. Buday stated that there is some lack of clarity of deep use. Is it the flagpole is across the field from the building or is it that the building is back from the road even though there is a parking lot directly under the flagpole? Bates asked what happens if approved due to a deep use setback and that view changes? Things change all of the time. Our jurisdiction is on the pole not on the flag itself. The content of the flag cannot be specified. Lively stated that most do State or Country flags. Bates stated that there are many non-compliant patriotic flagpoles that don’t meet federal standards. Our job is only the pole not the flag. Lively stated that if someone has the wherewithal to put up a higher flagpole and it works with the property/situation we should look at it. Alexander stated that perhaps we ask why higher flagpoles are not allowed and come at it from that viewpoint. Drier stated that if this is what is to happen a motion should be made asking the Planning Commission to review this ordinance section. Bates stated that the ordinance shows a maximum height of 30’ and since we can’t regulate content, he is concerned that even with really good intentions doesn’t give us the purview to regulate what someone does with a flag on that pole. Alexander stated that he believes Lively would just like clarification on the ordinance and why it is set up the way it is. Lively agreed; why and how. What does deep use setback mean to allow a higher pole? Are we the ones that should speak up and ask an applicant if they’ve looked at other options? Drier stated that this would be
normally done at the office when they come in to apply. Other options were given in the last review. Alexander noted that even though he understands that the rules on Tribal land and the rest of Emmet County land are different, it is difficult for the public to see the discrepancies. Lively stated that he will come up with something for the next meeting.

- **Application update**: Doernenburg reported that new zoning action applications have been created specifically for ZBA cases which also include detailed questions that have to be answered by the applicant. These questions directly correlate with the review standards that the ZBA uses to review cases. Lively asked if the townships will be filling these out as well. Doernenburg stated that staff plans to distribute the information to the township when doing notifications and we can request that they fill out a form. The new forms are active online and in the office. A suggestion was made to provide a standard form to the townships to complete.

**VI. Adjournment:**
Alexander called the meeting adjourned at 7:25 PM.

**Minutes Certification:**

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Mark Buday, Secretary Date