



VILLAGE OF PENTWATER

ON PENTWATER LAKE AND LAKE MICHIGAN
327 South Hancock Street, P.O. Box 622, Pentwater, Michigan 49449
(231) 869-8301 - FAX (231) 869-5120
www.pentwatervillage.org

Pentwater Village Zoning Board of Appeals
Community Room – 327 Hancock St.
Wednesday, June 7, 2017
7:00 P.M

Agenda

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Approval of Agenda
- V. Approval of the Minutes of the May 4, 2016 Meeting
- VI. Correspondence / Public Comments
- VII. Unfinished Business - None
- VIII. New Business
 - A. Election of Officers
 - B. Status of Bates Lawsuit
 - C. Introduction of suggested amendments to the ZBA By-Laws
 - C. Zoning Board of Appeals Toolkit
- IV. Adjournment



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Regular Meeting Minutes – May 4, 2016

Chairperson Castor called the regular meeting of the Pentwater Zoning Board of Appeals Meeting to order at 7:00 P.M. with the Pledge of Allegiance.

ROLL CALL

Present: Gay Birchard, Juanita Lamb, Andrew Witt, Norm Shotwell, Nancy Ceton (Alternate), and Mike Castor.

Absent: Bill O'Donnell, and Jim Young (Alternate).

Others present: Zoning Administrator Sara Bizon, Deputy Clerk/Treasurer Barbara Siok.

APPROVAL OF AGENDA

Motion by Shotwell, second by Birchard to approve agenda.

Voice Vote: Ayes: 6, Nays: 0. **Motion carried.**

PUBLIC COMMENTS ON AGENDA ITEMS: None.

APPROVAL OF MINUTES

Motion by Shotwell, second by Witt to approve September 2, 2015 meeting minutes.

Voice Vote: Ayes: 6, Nays: 0. **Motion carried.**

Motion to open Public Hearing by Birchard, second by Shotwell.

Roll Call Vote: Ayes: 6, Nays: 0. **Motion carried.**

Chair Mike Castor explained request for two separate variance requests.

Zoning Administrator Sara Bizon presented variance request from Mr. James Pearce with Jeremy Horton present from Harbor Design to answer any questions for the property on Beach Street explaining handout information. Mr. Pearce is requesting a variance due to restrictions under the Critical Dunes Act. The first variance is a 2ft. height variance for the structure to be built at 37 feet high. The second variance request; for a 7ft front set back request, after further review with no platted roads and access by driveways, Bizon suggests a front yard variance is not needed. Bizon reviewed the application and sent letters to any property owners within 300 ft. Copies of responses were included in the packet and additional by email or copies available tonight. The variance request of 37 ft. height is for ordinance Section 6.04E of the R2 District regulations which calls for a maximum height of 35 feet. The set back is not an issue.

Bizon said the zoning administrator does not make a recommendation on variance requests, but with everything received, the property owner has received approval from the Health Department and the DEQ based on the board approval which the DEQ approval will become valid.

Jeremy Horton stated the request is for hardship due to the small footprint and not excavating into the dunes thus creating three stories with no basement and still make it architecturally pleasing and appealing. It was pointed out that the positive responses from the letters received from the community are in support of Mr. Pearce which doesn't obstruct from anyone's view.

PUBLIC COMMENTS: Ted Cuchna, 529 Clymer, commented that architects from other areas might not understand the full information on our ordinances and that he inspected the site and plans include 10ft. ceiling heights and 12 ft. roof which could be adjusted a few feet.

Ron Christians, 87 Sands, retired fire department chief, commented on the 35 ft. ruling coming from ladders put on fire trucks can often be exceeded and probably wouldn't make a difference to the fire department.

Norm Shotwell asked about the architect's design to meet the property owner's approval.

Jeremy Horton said the DEQ set the footprint after evaluating the slopes and the architect and property owner were cognizant in making their decisions and compromised.

There being no further questions or discussions:

Motion to close the Public Hearing by Shotwell, second by Ceton. Roll call vote: Unanimous. Motion passed.

Comments:

Bizon said that a new set of by-laws that were adopted, a new magazine and a copy of open meetings act from the county were distributed on the table. The local prosecutor could give a presentation on the open meetings act if requested.

UNFINISHED BUSINESS: None

NEW BUSINESS:

Motion by Birchard to approve the 2 ft. height variance request by Mr. Pearce, second by Shotwell.

Discussion followed using the worksheet, which will be part of the public record.

Condition #1: (Section 18.08 A (1)): "Granting the variance will not be contrary to the public interest and will ensure that the spirit of this Ordinance is observed."

Comments: Given the restraints placed on the architects they met the conditions of the ordinance as much as possible, public interest and letters were positive and supportive, meeting DEQ demands are difficult.

Condition #2: (Section 18.08 A (2)): "Granting the variance will not cause a substantial adverse effect to property or improvements in the vicinity or in the district in which the subject property is located."

Comments: Collectively letters and public interest were positive and supportive.

Condition #3: (Section 18.08 A (3)): "The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practicable."

Comments: Agree, not necessary to go to the Planning Commission.

Condition #4: (Section 18.08 A (4)): “That there are practical difficulties in the way of carrying out the strict letter of these regulations which are caused by exceptional or extraordinary circumstances or conditions applying to the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the vicinity in the same zoning district. Exceptional or extraordinary circumstances or conditions include:

- a. Exceptional narrowness, shallowness or shape of a specific property on the effective date of this Ordinance;
- b. Exceptional topographic conditions;
- c. By reason of the use or development of the property immediately adjoin the property in question; or
- d. Any other physical situation on the land, building or structure deemed by the Board of Appeals to be extraordinary.

Comments: B. is the key reason with exceptional topographic conditions, agree.

Condition #5: (Section 18.08 A (5)): “That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.”

Comments: Necessary for preserving Mr. Pearson’s property rights.

Condition #6: (Section 18.08 A (6)): “That the variance is not necessitated as a result of any action or inaction to the property prior to the variance request by the applicant or his/her representative.”

Comments: Agree. No impact. Trying for more than 20 years.

Roll call vote: Birchard: Yes, Shotwell: Yes, Castor: No, Lamb: Yes, Witt: Yes, Ceton: Yes.
Ayes: 5, Nays: 1. Motion carried.

ELECTION OF OFFICERS:

Motion by Shotwell to nominate Mike Castor as Chair and Bill O’Donnell as Vice-Chair, second by Ceton. Roll call vote: Ayes: 5, Abstain: 1. Motion passed.

Motion by Shotwell to close the nominations, second by Ceton.

BATES UPDATE: Bizon said that Bates filed an appeal to Judge Monton’s ruling and the Village is in the process of hiring a new attorney and will be given the information when necessary.

Bizon requested if an August meeting is needed, to please consider changing the date due to her being out of the state.

ADJOURNMENT

Motion to adjourn by Shotwell second by Lamb. All Ayes.

Castor adjourned the meeting at 8:00 PM

Respectfully submitted by,

Barbara Siok
Deputy Clerk/Treasurer

Date

MEMORANDUM

To: Village of Pentwater Zoning Board of Appeals
From: Keith Edwards, Zoning Administrator
Date: May 30, 2017
Subject: Proposed Amendments to the ZBA By-Laws

Introduction

At the June 7, 2017, Zoning Board of Appeals (ZBA) meeting, the agenda includes the introduction of proposed amendments to the ZBA By-Laws dated March 4, 2015. At this time, I am proposing the following amendments for your consideration:

Discussion

ARTICLE III: MEMBERS

Sec. 1 MEMBERSHIP COMPOSITION. - Proposed changing of the number of regular members to five (5) instead of seven (7). It is not necessary, in accordance with the Michigan Zoning Enabling Act to have more than five members, and our ZBA has two alternates, which should be more than enough to adequately serve the ZBA.

ARTICLE VI: MEETINGS

Sec. 4 QUORUM. – If the number of members above is changed to five, then a quorum would natural consist of 3 members for a dimensional variance, and I suggest 4 for a use variance.

Sec. 6, Paragraph G CONSIDERATION OF MATTER BY BOARD., and Sec. 7 MOTIONS. – Proposed changing of the term “table and/or adjournment” of meetings to “postpone or postponing”. The term “table” is to allow the Queen to enter the room, everyone puts their work down, but when she is out of the room, we pick our work up again. Whereas, the term “postpone” would mean to pick up the item again at a later date. Additionally, the ZBA By-Laws recommend setting a date certain for when the postponed item is to return for discussion. Such a practice saves confusion and the requirement to re-advertise a meeting or public hearing. Although the tern “adjourn” does mean to postpone or pick up later, the term could easily be confused with adjournment at the end of the meeting, which in this case means to terminate a particular session.

Sec. 8 VOTING. – If the members are reduced to five (5) above, then it will be necessary to reduce the number of votes required to approve a motion to three (3).

Conclusion

The above proposed amendments are illustrated on the attached draft of the proposed by-laws. Wording proposed to be removed is shown in red type with a strikethrough, and proposed insertions are shown in blue type.

Additionally, In reference to Article V, Section 6, Paragraph G, the findings of fact or fact finding should take place before a motion to decide the matter. I noticed in the ZBA’s last two sets of minutes that a

motion was made to deny or approve prior to stating the findings of fact on a case. Thus, I suggest that we change the way this is practiced to be in line with our by-laws.

In accordance with ARTICLE XIV: AMENDMENT OF BY-LAWS, the proposed changes must be proposed at a regular meeting prior to being approved at a subsequent regular meeting (which could take up to a year or more, since Village Council also has to approve the changes).

I have attached a clean copy of the current ZBA By-Laws, and edited copy which shows the items to be removed in **red type with a strikethrough** and wording to be inserted in **blue type**.

I will be available at the June 7, 2017 Regular meeting of the ZBA to discuss the proposed changes.

**PENTWATER VILLAGE
ZONING BOARD OF APPEALS
BY-LAWS AND RULES OF PROCEDURE
(AMENDED MARCH 4, 2015)**

ARTICLE I: NAME

Sec. 1 The name of the organization shall be the "PENTWATER VILLAGE ZONING BOARD OF APPEALS."

ARTICLE II: AUTHORITY AND DUTIES

Sec. 1 These by-laws and rules of procedure are adopted by the Pentwater Zoning Board of Appeals pursuant to the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended.

Sec 2 The Zoning Board of Appeals shall perform such legally permissible duties and shall carry out such processes and procedures as may be required by the Michigan Zoning Enabling Act or the Pentwater Community Zoning Ordinance including the following:

- A. Act on applications for variances, appeals, interpretations, or other matters as required by the zoning ordinance and Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, MCL 125.3101, et seq.
- B. Prepare an annual budget for the Zoning Board of Appeal's activities and submit to the Village Council.
- C. Attend training sessions, conferences, or meetings as needed to properly fulfill the duties of a Zoning Board of Appeals member, and for which appropriations of funds have been approved by the Village Council as needed.
- D. Perform other duties and responsibilities as requested by the Village Council or as may be specified in another Village ordinance.
- E. Conduct site visits as deemed necessary to evaluate an application and supporting material. Site visits shall be conducted individually.

ARTICLE III: MEMBERS

Sec. 1 MEMBERSHIP COMPOSITION. The Pentwater Village Zoning Board of Appeals shall consist of seven members appointed by the Pentwater Village Council. In addition, the Village Council may appoint not more than two (2) alternate members.

Sec. 2 COMPENSATION. All appointed and alternate members of the Board may be compensated at a rate to be determined by the Village Council.

Sec. 3 RESTRICTIONS. An alternate member shall only serve on the board in the absence of a regular member or during the abstention of a regular member for reasons of a conflict of interest. The alternate members shall serve in the case until a final decision, in accordance with the Pentwater Community Zoning Ordinance, has been made.

Sec. 4 TERMS OF OFFICE. The terms of office of regular and alternate members shall be three (3) years arranged such to provide as nearly as possible for the appointment of an equal number of members each year.

Sec. 5 VACANCIES. A vacancy on the Board occurring otherwise than through the expiration of the term shall be filled for the unexpired term by the Village Council.

Sec. 6 VOTING RIGHTS OF ALTERNATE MEMBERS. Alternate members shall only have the right to vote upon those specific matters in which they have been called upon to serve in the absence of a regular member or called upon to serve due to the abstention of a regular member as a result of a conflict of interest. The alternate member shall then continue to hear those cases for which they were called to serve until final disposition of those cases.

ARTICLE IV: OFFICERS

- Sec. 1 **SELECTION**. At the first regular meeting in May of each year, the Pentwater Village Zoning Board of Appeals shall elect its Chairman and Vice Chairman from amongst the regular members of the Board. The Board may create and fill such other of its offices as it may determine to be necessary.
- Sec. 2 **TERMS OF OFFICERS**. The terms of the Chairman and Vice Chairman shall be one (1) year in length or until their successors are elected, with eligibility for re-election.
- Sec. 3 **OFFICER DUTIES**. The chairman shall preside over all meetings of the Board and shall perform the duties prescribed by these by-laws and by the parliamentary authority adopted by the Board. The Vice Chairman shall perform the duties of the Chairman in the absence or disability of the Chairman.
- Sec. 4 **PLANNING COMMISSION REPRESENTATIVE**. The planning commission representative to the Board shall report the actions of the Board to the planning commission and update the Board on actions by the planning commission that relate to the functions and duties of the Board.
- Sec. 5 **VACANCIES**. If a vacancy should occur in any office, the Board shall elect another person to fill such vacancy in the same manner and under the same conditions outlined above for the remainder of the term of said office.
- Sec. 6 **RECORDING SECRETARY**. The Recording Secretary shall be responsible for keeping a written record in the English language of the resolutions, transactions, findings, and determinations of the Board, which record shall be a public record subject to the provisions of the Michigan Freedom of Information Act, Public Act 442 of 1976, as amended. The Recording Secretary shall also be responsible for the preparation and dissemination of Board meeting and public hearing notices pursuant to the Michigan Open Meeting Act, Public Act 267 of 1976, as amended. The Recording Secretary shall also perform other duties as prescribed by these by-laws, State and local laws, and the parliamentary authority adopted by the Board.

ARTICLE V: MEETINGS

- Sec. 1 **REGULAR MEETING**. Regular meetings of the Zoning Board of Appeals shall be held as needed in Pentwater Village Hall on a date established by the Board. The dates and times shall be posted at the Pentwater Village Hall and a notice should be published in accordance with the Open Meetings Act. Any changes in the date or time or location of the regular meetings shall be posted and noticed in the same manner as originally established.
- Sec. 2 **ANNUAL MEETING**. The regular meeting of the Board in May of each year shall be known as the Annual Meeting and shall be for the purpose of electing offices, receiving annual reports of offices and committees, and for any other business that may arise.
- Sec. 3 **SPECIAL MEETINGS**. Special meetings may be called by the Chairman. The purpose of the meeting shall be stated in the call. The business which the Board may perform shall be conducted at a public meeting of the Board held in compliance with the Michigan Open Meetings Act. Public notice of the time, date, and place of the special meeting shall be given in the manner required in the Open Meetings Act, and the Village Clerk shall send written notice of a special meeting to Board members not less than one (1) day in advance of the meeting, except that any such meeting at which all regular members of the Board are present or have waived notice in writing shall be a legal meeting for all purposes without notice, subject to the Michigan Open Meetings Act. Applicants to the Zoning Board of Appeals may request a special meeting, of which all costs shall be paid by the applicant; if there is more than one applicant, the costs shall be shared equally between all applicants.
- Sec. 4 **QUORUM**. Four (4) members of the Board shall constitute a quorum of the Board for the conduct of business, except that it shall be necessary to have a minimum of five (5) members present and voting in the affirmative to approve land use variances permitted in the Zoning Ordinance. When a quorum is not present, no official action of the Board, except for closing

of the meeting, may take place. Due to its quasi-judicial nature, the Zoning Board of Appeals shall not engage in discussion on any matter during any time in which a quorum of the Board is not present for the conduct of business. All public hearings without a quorum present shall be rescheduled for the next regular or special meeting and no additional public notice shall be required, provided that the date, time and a place for the rescheduled public hearing is announced at the meeting.

Sec. 5 **ORDER OF BUSINESS.** A written agenda for all regular and special meetings shall be prepared and followed. The order of business shall, at a minimum, be:

Call to Order
Roll Call
Approval of Agenda
Approval of Minutes
Scheduled Public Hearings
Correspondence
Unfinished Business
New Business
Adjournment

Sec. 6 **HEARINGS.** Hearings shall be scheduled and due notice given in accordance with the provisions of the Michigan Open Meeting Act and the Michigan Zoning Enabling Act under which the public hearing is being held. The applicant or representative of the applicant must be present at the scheduled public hearing for an appeal or the complaint, or the issue will be tabled by the Board. Public hearings conducted by the Board shall be run in an orderly and timely fashion, which shall be accomplished by adhering to the following public hearing procedure:

A. **OPENING ANNOUNCEMENT.** The Chairman shall give an official opening announcement of the public hearing indicating the basic nature of the request and citing how public notice was provided of the hearing.

B. **ANNOUNCEMENT OF ORDER OF HEARING.** The Chairman shall explain the order of the public hearing as being as follows:

- (1) Comments and explanations by the Zoning Administrator
- (2) Comments and explanations by the Applicant
- (3) Questions by the Board
- (4) Responses by the applicant and/or Zoning Administrator
- (5) Opening of hearing for public comments
- (6) Closing of hearing to public comments
- (7) Consideration of action by Board.

C. **RULES OF CONDUCT.** The Chairman shall then announce the rules of conduct of the public hearing as follows:

- (1) All comments shall be addressed to the Chair;
- (2) Each person shall be given an opportunity to be heard, but second comments; will not be permitted until every person has had the opportunity to speak for the first time;
- (3) In the interest of fairness to the public, statements from the floor should be as concise as possible;
- (4) The Chairman reserves the right to terminate a presentation or ask for a summation if comments become excessively repetitive or stray from the issues at hand;
- (5) For large hearings, a time limit of three (3) minutes per person shall be placed on public comments;

- (6) At all times during the public hearing, the Chair expects courtesy from all participants. Catcalls, booing, or other outbursts from the public shall not be tolerated; and
- (7) Decision of the Board shall be based upon accurate fact and the authority vested in the Board by State statute and Pentwater Community Zoning Ordinance.
- D. **PRESENTATION OF PROPOSAL.** The Chairman shall recognize the Zoning Administrator and applicant for presentations. The Zoning Administrator presents a report outlining the request and the specific sections and requirements of the Zoning Ordinance that are impacted by the subject request. The applicant then presents a concise review of the reasons for the appeal and responds to questions raised by the Board.
- E. **OPENING OF HEARING TO FLOOR.** The Chairman then opens the public hearing to comments from the floor, reminds the public of the rules of conduct, and indicates that once a person has been recognized by the Chair they shall stand and give their name and address and a concise statement of their questions and/or concerns. In the event of large hearing, the Chairman may encourage groups in attendance to be represented by a spokesperson. When individual time limits have been imposed, the Chairman reserves the right to limit the amount of time allocated to be a spokesperson to avoid filibustering. The Chairman may elect during the course of public comments to obtain clarification of facts from the Village administration or from the applicant if such comments may expedite the hearing. The Chairman shall receive for the official record any letter and/or petitions received by the Board regarding the matter at hand and shall read and/or summarize these materials.
- F. **CLOSING OF PUBLIC HEARING.** When all public comments have been received, the Chairman shall close the public hearing.
- G. **CONSIDERATION OF MATTER BY BOARD.** Once the public hearing has been closed to public comments, the Chairman may recognize any Board member to discuss and seek additional information from others concerning the matter at hand. Board members shall address the Chairman when speaking and shall request additional information through the Chairman. When discussion and fact finding on the matter at hand by Board members has been completed, the Board may take one of the following four actions on the matter: (1) Approve the request as presented; (2) Approve the request with conditions; (3) Deny the request as presented; or (4) Table/adjourn the matter to a future meeting.

Sec. 7 **MOTIONS.** Motions for approvals or denials and motions to table or adjourn a matter to a future meeting should include reasons for such actions. Motions for tabling or adjournment should also include the date, time, and place at which the matter will be further considered. Motions shall be restated by the Chairman before a vote is taken. The name of the maker and those who seconded the motions shall be recorded. Motions should be considerate of the following:

- A. The Board shall determine whether the respective requirements of the Pentwater Community Zoning Ordinance have been met by the applicant and;
- B. The Board shall determine whether the reasons set forth by the applicant justify the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure.

Sec. 8 **VOTING.** An Affirmative vote of the majority of the Board's regular membership shall be required for the approval of any requested action or motion placed before the Board, except that at least five (5) members voting in the affirmative shall be required to approve a variance of any land use permitted under the Pentwater Community Zoning Ordinance. Voting shall ordinarily be by voice vote; provided however that a roll call vote shall be required if requested by any Board member or directed by the Chairman. All members of the Board including the Chairman shall

vote on all matters, but the chairman shall vote last.

Sec. 9 **NOTICE OF DECISIONS.** A written notice containing the decision of the Zoning Board of Appeals shall be sent by the Village Clerk to petitioners and originators of a request.

Sec. 10 **MEETING MINUTES.** Board minutes shall be prepared by the Office of the Village Clerk. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and recording of votes; complete statement of the conditions or recommendations made on any action; and recording of attendance. All communications, actions, and resolutions shall be attached to the minutes. The official records shall be deposited with the Village Clerk upon approval by the Board.

ARTICLE VI: ABSENCES, REMOVALS, RESIGNATIONS, VACANCIES AND ALTERNATES

Sec. 1 To be excused, zoning board of appeals members shall notify the Village Clerk or Zoning Board of Appeals Chairperson or other zoning board of appeals member when they intend to be absent from a meeting. Failure to make this notification prior to a meeting shall result in an unexcused absence.

Sec. 2 Members of the Zoning Board of Appeals may be removed by the Village Council, after written charges have been prepared and a hearing conducted, for nonperformance of duty, misconduct in office or upon failure to declare a conflict of interest. For purposes of this section, nonperformance of duty shall mean two or more consecutive, unexcused absences. Alternates shall be notified to attend a meeting any time a regular member will be absent for one or more meetings.

Sec. 3 A member may resign from the Zoning Board of Appeals by sending a letter of resignation to the Village Clerk, Village Council or Zoning Board of Appeals Chairperson.

Sec. 4 Vacancies shall be filled by the Village Council as soon as possible after a resignation or removal of a member of the zoning board of appeals. Successors shall serve out the unexpired term of the member being replaced, with the exception of the planning commission representative, whose term shall run consecutively with the term as planning commissioner. The Zoning Board of Appeals, in its recommendation to the Village Council, should give priority to elevate Alternates to become members to fill such vacancies.

Sec. 5 The Village Council may appoint not more than two alternates to the Zoning Board of Appeals. The alternate member may be called to sit as a regular member as provided in the zoning ordinance and the Michigan Zoning Enabling Act.

ARTICLE VII: CONFLICT OF INTEREST

Sec. 1 Zoning Board of Appeals members shall declare a conflict of interest and abstain from participating in hearings, deliberations or voting on a request when:

- A. A relative or other family member is involved in any request for which the Zoning Board of Appeals is asked to make a decision;
- B. The Zoning Board of Appeals member has a business, organizational or financial interest in the property involved in the request, or has a business or financial interest in the applicant's company, agency or association;
- C. There is a reasonable appearance of a conflict of interest, as determined by the Zoning Board of Appeals member declaring such conflict.

ARTICLE VIII: OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

Sec. 1 All meetings of the Board shall be open to the public and shall be held in a place available to the general public. All deliberations and decisions of the Board shall be made at a meeting open to the public. A person shall be permitted to address a hearing of the Board under the rules established by these by-laws. A person shall not be excluded from a meeting of the Board except for breach of the peace committed at a meeting. All records, files, publications, correspondence, and other materials are available to the public for reading, copying, and other purposes as governed by the Freedom of Information Act.

ARTICLE IX: EMPLOYEES

Sec. 1 The Board may appoint employees as it may deem necessary for its work, whose appointment, promotion, demotion and removal shall be subject to the same provisions of law as govern other corresponding civil employees of the Village.

ARTICLE X: CONTRACTS

Sec. 1 The Board may contract with city planners, engineers, architects and other consultants for such services as it may require, subject to Council approval as to expenditures.

ARTICLE XI: EXPENDITURES

Sec. 1 All expenditures of the Board shall be within the amount appropriated for Board purposes by Council. The Council shall provide the funds, equipment and accommodations necessary for the Board's work. The Board, through the Zoning Administrator, shall prepare the recommended budget for the ensuing fiscal year for submission to the Village Manager.

ARTICLE XII: PARLIAMENTARY AUTHORITY

Sec. 1 The rules contained in the current edition of ROBERTS RULES OF ORDER NEWLY REVISED shall govern the Zoning Board of Appeals in all cases to which they are applicable and in which they are not inconsistent with these by-laws and any special rules of order the Board may from time to time adopt.

ARTICLE XIII: CONFLICTING PROVISIONS

Sec.1 In the event of a conflict of provisions between these Bylaws and the Pentwater Community Zoning Ordinance, the provisions contained in the Zoning Ordinance shall prevail.

ARTICLE XIV: AMENDMENT OF BY-LAWS

Sec. 1 These by-laws may be adopted and amended at any regular meeting of the Board by a two-thirds vote, provided that the amendment has been submitted in writing at the previous regular meeting. All by-laws amendments shall be subject to final approval by the Village Council.

THESE BY-LAWS WERE DULY ADOPTED BY A TWO-THIRDS VOTE OF THE PENTWATER VILLAGE ZONING BOARD OF APPEALS DURING ITS REGULAR MEETING HELD ON THE 4th DAY OF MARCH, 2015.

Pentwater Zoning Board of Appeals

Michael S. Castor, Chairperson

This ____ Day of _____ 2015

**PENTWATER VILLAGE
ZONING BOARD OF APPEALS
BY-LAWS AND RULES OF PROCEDURE
(AMENDED MARCH 4, 2015)
Proposed Revision June 7, 2017**

ARTICLE I: NAME

Sec. 1 The name of the organization shall be the "PENTWATER VILLAGE ZONING BOARD OF APPEALS."

ARTICLE II: AUTHORITY AND DUTIES

Sec. 1 These by-laws and rules of procedure are adopted by the Pentwater Zoning Board of Appeals pursuant to the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended.

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- A. Act on applications for variances, appeals, interpretations, or other matters as required by the zoning ordinance and Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, MCL 125.3101, et seq.
- B. Prepare an annual budget for the Zoning Board of Appeal's activities and submit to the Village Council.
- C. Attend training sessions, conferences, or meetings as needed to properly fulfill the duties of a Zoning Board of Appeals member, and for which appropriations of funds have been approved by the Village Council as needed.
- D. Perform other duties and responsibilities as requested by the Village Council or as may be specified in another Village ordinance.
- E. Conduct site visits as deemed necessary to evaluate an application and supporting material. Site visits shall be conducted individually.

ARTICLE III: MEMBERS

Sec. 1 MEMBERSHIP COMPOSITION. The Pentwater Village Zoning Board of Appeals shall consist of ~~seven~~ **five** members appointed by the Pentwater Village Council. In addition, the Village Council may appoint not more than two (2) alternate members.

Sec. 2 COMPENSATION. All appointed and alternate members of the Board may be compensated at a rate to be determined by the Village Council.

Sec. 3 RESTRICTIONS. An alternate member shall only serve on the board in the absence of a regular member or during the abstention of a regular member for reasons of a conflict of interest. The alternate members shall serve in the case until a final decision, in accordance with the Pentwater Community Zoning Ordinance, has been made.

Sec. 4 TERMS OF OFFICE. The terms of office of regular and alternate members shall be three (3) years arranged such to provide as nearly as possible for the appointment of an equal number of members each year.

Sec. 5 VACANCIES. A vacancy on the Board occurring otherwise than through the expiration of the term shall be filled for the unexpired term by the Village Council.

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ARTICLE IV: OFFICERS

- Sec. 1 SELECTION. At the first regular meeting in May of each year, the Pentwater Village Zoning Board of Appeals shall elect its Chairman and Vice Chairman from amongst the regular members of the Board. The Board may create and fill such other of its offices as it may determine to be necessary.
- Sec. 2 TERMS OF OFFICERS. The terms of the Chairman and Vice Chairman shall be one (1) year in length or until their successors are elected, with eligibility for re-election.
- Sec. 3 OFFICER DUTIES. The chairman shall preside over all meetings of the Board and shall perform the duties prescribed by these by-laws and by the parliamentary authority adopted by the Board. The Vice Chairman shall perform the duties of the Chairman in the absence or disability of the Chairman.
- Sec. 4 PLANNING COMMISSION REPRESENTATIVE. The planning commission representative to the Board shall report the actions of the Board to the planning commission and update the Board on actions by the planning commission that relate to the functions and duties of the Board.
- Sec. 5 VACANCIES. If a vacancy should occur in any office, the Board shall elect another person to fill such vacancy in the same manner and under the same conditions outlined above for the remainder of the term of said office.
- Sec. 6 RECORDING SECRETARY. The Recording Secretary shall be responsible for keeping a written record in the English language of the resolutions, transactions, findings, and determinations of the Board, which record shall be a public record subject to the provisions of the Michigan Freedom of Information Act, Public Act 442 of 1976, as amended. The Recording Secretary shall also be responsible for the preparation and dissemination of Board meeting and public hearing notices pursuant to the Michigan Open Meeting Act, Public Act 267 of 1976, as amended. The Recording Secretary shall also perform other duties as prescribed by these by-laws, State and local laws, and the parliamentary authority adopted by the Board.

ARTICLE V: MEETINGS

- Sec. 1 REGULAR MEETING. Regular meetings of the Zoning Board of Appeals shall be held as needed in Pentwater Village Hall on a date established by the Board. The dates and times shall be posted at the Pentwater Village Hall and a notice should be published in accordance with the Open Meetings Act. Any changes in the date or time or location of the regular meetings shall be posted and noticed in the same manner as originally established.
- Sec. 2 ANNUAL MEETING. The regular meeting of the Board in May of each year shall be known as the Annual Meeting and shall be for the purpose of electing offices, receiving annual reports of offices and committees, and for any other business that may arise.
- Sec. 3 SPECIAL MEETINGS. Special meetings may be called by the Chairman. The purpose of the meeting shall be stated in the call. The business which the Board may perform shall be conducted at a public meeting of the Board held in compliance with the Michigan Open Meetings Act. Public notice of the time, date, and place of the special meeting shall be given in the manner required in the Open Meetings Act, and the Village Clerk shall send written notice of a special meeting to Board members not less than one (1) day in advance of the meeting, except that any such meeting at which all regular members of the Board are present or have waived notice in writing shall be a legal meeting for all purposes without notice, subject to the Michigan Open Meetings Act. Applicants to the Zoning Board of Appeals may request a special meeting, of which all costs shall be paid by the applicant; if there is more than one applicant, the costs shall be shared equally between all applicants.
- Sec. 4 QUORUM. ~~Four (4)~~ **Three (3)** members of the Board shall constitute a quorum of the Board for the conduct of business, except that it shall be necessary to have a minimum of ~~five (5)~~ **four (4)** members present and voting in the affirmative to approve land use variances permitted in the

Zoning Ordinance. When a quorum is not present, no official action of the Board, except for closing of the meeting, may take place. Due to its quasi-judicial nature, the Zoning Board of Appeals shall not engage in discussion on any matter during any time in which a quorum of the Board is not present for the conduct of business. All public hearings without a quorum present shall be rescheduled for the next regular or special meeting and no additional public notice shall be required, provided that the date, time and a place for the rescheduled public hearing is announced at the meeting.

Sec. 5 ORDER OF BUSINESS. A written agenda for all regular and special meetings shall be prepared and followed. The order of business shall, at a minimum, be:

Call to Order
Roll Call
Approval of Agenda
Approval of Minutes
Scheduled Public Hearings
Correspondence
Unfinished Business
New Business
Adjournment

Sec. 6 HEARINGS. Hearings shall be scheduled and due notice given in accordance with the provisions of the Michigan Open Meeting Act and the Michigan Zoning Enabling Act under which the public hearing is being held. The applicant or representative of the applicant must be present at the scheduled public hearing for an appeal or the complaint, or the issue will be tabled by the Board. Public hearings conducted by the Board shall be run in an orderly and timely fashion, which shall be accomplished by adhering to the following public hearing procedure:

- A. OPENING ANNOUNCEMENT. The Chairman shall give an official opening announcement of the public hearing indicating the basic nature of the request and citing how public notice was provided of the hearing.
- B. ANNOUNCEMENT OF ORDER OF HEARING. The Chairman shall explain the order of the public hearing as being as follows:
 - (1) Comments and explanations by the Zoning Administrator
 - (2) Comments and explanations by the Applicant
 - (3) Questions by the Board
 - (4) Responses by the applicant and/or Zoning Administrator
 - (5) Opening of hearing for public comments
 - (6) Closing of hearing to public comments
 - (7) Consideration of action by Board.
- C. RULES OF CONDUCT. The Chairman shall then announce the rules of conduct of the public hearing as follows:
 - (1) All comments shall be addressed to the Chair;
 - (2) Each person shall be given an opportunity to be heard, but second comments; will not be permitted until every person has had the opportunity to speak for the first time;
 - (3) In the interest of fairness to the public, statements from the floor should be as concise as possible;
 - (4) The Chairman reserves the right to terminate a presentation or ask for a summation if comments become excessively repetitive or stray from the issues at hand;
 - (5) For large hearings, a time limit of three (3) minutes per person shall be placed

- on public comments;
 - (6) At all times during the public hearing, the Chair expects courtesy from all participants. Catcalls, booing, or other outbursts from the public shall not be tolerated; and
 - (7) Decision of the Board shall be based upon accurate fact and the authority vested in the Board by State statute and Pentwater Community Zoning Ordinance.
- D. **PRESENTATION OF PROPOSAL.** The Chairman shall recognize the Zoning Administrator and applicant for presentations. The Zoning Administrator presents a report outlining the request and the specific sections and requirements of the Zoning Ordinance that are impacted by the subject request. The applicant then presents a concise review of the reasons for the appeal and responds to questions raised by the Board.
- E. **OPENING OF HEARING TO FLOOR.** The Chairman then opens the public hearing to comments from the floor, reminds the public of the rules of conduct, and indicates that once a person has been recognized by the Chair they shall stand and give their name and address and a concise statement of their questions and/or concerns. In the event of large hearing, the Chairman may encourage groups in attendance to be represented by a spokesperson. When individual time limits have been imposed, the Chairman reserves the right to limit the amount of time allocated to be a spokesperson to avoid filibustering. The Chairman may elect during the course of public comments to obtain clarification of facts from the Village administration or from the applicant if such comments may expedite the hearing. The Chairman shall receive for the official record any letter and/or petitions received by the Board regarding the matter at hand and shall read and/or summarize these materials.
- F. **CLOSING OF PUBLIC HEARING.** When all public comments have been received, the Chairman shall close the public hearing.
- G. **CONSIDERATION OF MATTER BY BOARD.** Once the public hearing has been closed to public comments, the Chairman may recognize any Board member to discuss and seek additional information from others concerning the matter at hand. Board members shall address the Chairman when speaking and shall request additional information through the Chairman. When discussion and fact finding on the matter at hand by Board members has been completed, the Board may take one of the following four actions on the matter: (1) Approve the request as presented; (2) Approve the request with conditions; (3) Deny the request as presented; or (4) ~~Table/adjourn~~ **postpone** the matter to a future meeting.
- Sec. 7 **MOTIONS.** Motions for approvals or denials and motions to ~~table or adjourn~~ **postpone** a matter to a future meeting should include reasons for such actions. Motions for ~~tabling~~ **postponing** ~~or adjournment~~ should also include the date, time, and place at which the matter will be further considered. Motions shall be restated by the Chairman before a vote is taken. The name of the maker and those who seconded the motions shall be recorded. Motions should be considerate of the following:
- A. The Board shall determine whether the respective requirements of the Pentwater Community Zoning Ordinance have been met by the applicant and;
 - B. The Board shall determine whether the reasons set forth by the applicant justify the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure.
- Sec. 8 **VOTING.** An Affirmative vote of the majority of the Board's regular membership shall be required for the approval of any requested action or motion placed before the Board, except that at least ~~five three (5) (3)~~ **three (3)** members voting in the affirmative shall be required to approve a variance of any land use permitted under the Pentwater Community Zoning Ordinance. Voting shall ordinarily be by voice vote; provided however that a roll call vote shall be required if

requested by any Board member or directed by the Chairman. All members of the Board including the Chairman shall vote on all matters, but the chairman shall vote last.

Sec. 9 **NOTICE OF DECISIONS.** A written notice containing the decision of the Zoning Board of Appeals shall be sent by the Village Clerk to petitioners and originators of a request.

Sec. 10 **MEETING MINUTES.** Board minutes shall be prepared by the Office of the Village Clerk. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and recording of votes; complete statement of the conditions or recommendations made on any action; and recording of attendance. All communications, actions, and resolutions shall be attached to the minutes. The official records shall be deposited with the Village Clerk upon approval by the Board.

ARTICLE VI: ABSENCES, REMOVALS, RESIGNATIONS, VACANCIES AND ALTERNATES

Sec. 1 To be excused, zoning board of appeals members shall notify the Village Clerk or Zoning Board of Appeals Chairperson or other zoning board of appeals member when they intend to be absent from a meeting. Failure to make this notification prior to a meeting shall result in an unexcused absence.

Sec. 2 Members of the Zoning Board of Appeals may be removed by the Village Council, after written charges have been prepared and a hearing conducted, for nonperformance of duty, misconduct in office or upon failure to declare a conflict of interest. For purposes of this section, nonperformance of duty shall mean two or more consecutive, unexcused absences. Alternates shall be notified to attend a meeting any time a regular member will be absent for one or more meetings.

Sec. 3 A member may resign from the Zoning Board of Appeals by sending a letter of resignation to the Village Clerk, Village Council or Zoning Board of Appeals Chairperson.

Sec. 4 Vacancies shall be filled by the Village Council as soon as possible after a resignation or removal of a member of the zoning board of appeals. Successors shall serve out the unexpired term of the member being replaced, with the exception of the planning commission representative, whose term shall run consecutively with the term as planning commissioner. The Zoning Board of Appeals, in its recommendation to the Village Council, should give priority to elevate Alternates to become members to fill such vacancies.

Sec. 5 The Village Council may appoint not more than two alternates to the Zoning Board of Appeals. The alternate member may be called to sit as a regular member as provided in the zoning ordinance and the Michigan Zoning Enabling Act.

ARTICLE VII: CONFLICT OF INTEREST

Sec. 1 Zoning Board of Appeals members shall declare a conflict of interest and abstain from participating in hearings, deliberations or voting on a request when:

- A. A relative or other family member is involved in any request for which the Zoning Board of Appeals is asked to make a decision;
- B. The Zoning Board of Appeals member has a business, organizational or financial interest in the property involved in the request, or has a business or financial interest in the applicant's company, agency or association;
- C. There is a reasonable appearance of a conflict of interest, as determined by the Zoning Board of Appeals member declaring such conflict.

ARTICLE VIII: OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

Sec. 1 All meetings of the Board shall be open to the public and shall be held in a place available to the general public. All deliberations and decisions of the Board shall be made at a meeting open to the public. A person shall be permitted to address a hearing of the Board under the rules established by these by-laws. A person shall not be excluded from a meeting of the Board except for breach of the peace committed at a meeting. All records, files, publications, correspondence, and other materials are available to the public for reading, copying, and other purposes as governed by the Freedom of Information Act.

ARTICLE IX: EMPLOYEES

Sec. 1 The Board may appoint employees as it may deem necessary for its work, whose appointment, promotion, demotion and removal shall be subject to the same provisions of law as govern other corresponding civil employees of the Village.

ARTICLE X: CONTRACTS

Sec. 1 The Board may contract with city planners, engineers, architects and other consultants for such services as it may require, subject to Council approval as to expenditures.

ARTICLE XI: EXPENDITURES

Sec. 1 All expenditures of the Board shall be within the amount appropriated for Board purposes by Council. The Council shall provide the funds, equipment and accommodations necessary for the Board's work. The Board, through the Zoning Administrator, shall prepare the recommended budget for the ensuing fiscal year for submission to the Village Manager.

ARTICLE XII: PARLIAMENTARY AUTHORITY

Sec. 1 The rules contained in the current edition of ROBERTS RULES OF ORDER NEWLY REVISED shall govern the Zoning Board of Appeals in all cases to which they are applicable and in which they are not inconsistent with these by-laws and any special rules of order the Board may from time to time adopt.

ARTICLE XIII: CONFLICTING PROVISIONS

Sec.1 In the event of a conflict of provisions between these Bylaws and the Pentwater Community Zoning Ordinance, the provisions contained in the Zoning Ordinance shall prevail.

ARTICLE XIV: AMENDMENT OF BY-LAWS

Sec. 1 These by-laws may be adopted and amended at any regular meeting of the Board by a two-thirds vote, provided that the amendment has been submitted in writing at the previous regular meeting. All by-laws amendments shall be subject to final approval by the Village Council.

THESE BY-LAWS WERE DULY ADOPTED BY A TWO-THIRDS VOTE OF THE PENTWATER VILLAGE ZONING BOARD OF APPEALS DURING ITS REGULAR MEETING HELD ON THE 4th DAY OF MARCH , 2015 2017.

Pentwater Zoning Board of Appeals

Michael S. Castor, Chairperson

This ____ Day of _____ 2017

Proposed Revision: June 7, 2017