

**VILLAGE OF PENTWATER**  
**Zoning Board of Appeals**  
ON PENTWATER LAKE AND LAKE MICHIGAN  
327 South Hancock Street – P.O. Box 622  
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**Zoning Board of Appeals - Public Hearing Meeting Minutes – April 1, 2013**

Chairperson Castor called the Public Hearing Meeting of the Pentwater Zoning Board of Appeals to order at 7:00 PM with the Pledge of Allegiance.

**ROLL CALL**

Present: Damon Crumb, Keith Wells, Norm Shotwell, Gay Birchard, Earl Raczkowski,  
Mike Castor.

Absent: Juanita Lamb, Bill O'Donnell, Paul Anderson

**APPROVAL OF AGENDA** - Motion by Norm Shotwell, second by Damon Crumb to approve the Agenda as amended adding to New Business: special meeting on April 11 and copies of the submitted public letters put in packet. Voice vote. Aye: 6 Nay: 0. Motion carried.

**PUBLIC COMMENTS ON AGENDA PROPER** – Ted Cuchna; Nickerson Inn, Jack Paterson; Nickerson, Rich Studley, Nickerson Inn, Ken Matheson; Nickerson Inn, John Schrier, representing Mr. and Mrs. Shiparski regarding the Nickerson Inn.

**APPROVAL OF MINUTES** – Motion by Damon Crumb, second Norm Shotwell, to approve February 4, 2013 ZBA meeting minutes correcting the chairperson name under Adjournment to Anderson. Minutes approved as amended. Voice vote. Aye: 6 Nay: 0. Motion carried.

**OPEN PUBLIC HEARING:** Motion to open public hearing; Norm Shotwell, second Gay Birchard. Chair Castor stated that the public hearing tonight is for the purpose of looking at an appeal to the zoning administrator's decision; not to rewrite an ordinance and not to grant a variance. Roll call vote: All Ayes. Motion carried.

**OPEN PUBLIC HEARING:**

Zoning Board of Appeal Administrator, Sara Bizon stated that she responded in January to the letter received in December from Mr. John Schrier, the attorney for Mr. & Mrs. Shiparski, the owners of the Nickerson Inn, asking three questions:

**(Q) 1. Is the ownership structure of the resort or an individual building in the resort relevant to permitted uses?** (A) Your question is the ownership structure of the resort of an individual building in the resort relevant to the permitted uses appears to me that you would like to sell off individual units within a single building. This would not be permitted since it would fall under section Chapter 7 R-3 Multiple Family Residential District Section 7.02 C. permitting uses Multiple Family Dwellings.

**(Q) 2. Are multiple detached buildings operating as a resort, permitted in the C-4 Hotel Resort District?** (A) Multiple detached buildings operating as a resort are not permitted in the C-4 Hotel Resort District under the Pentwater Community Zoning Ordinance.

Such buildings are defined under Section 2.14 Definitions –M as “Motel – A series of attached, semi-attached, or detached rental units providing overnight lodging for transients, open to the traveling public for compensation. A motel shall not include accessory uses, such as gift shops, restaurants, or other similar uses.”

**(Q) 3. The individual buildings would meet setback requirements. However, how is the density as to the number of buildings/cottages which can be constructed to be calculated?**

(A) Since multiple detached buildings are not permitted question three does not apply.

So the petitioner tonight is proposing a resort which we don't have defined in our zoning ordinance, and the district is called a hotel resort district.

Sara said, “In summary, I don't believe that a “resort” was the intent of the ordinance. So I do not believe that the individual motion should be permitted.”

**Open to audience:**

John Schrier stated that he represents Mr. & Mrs. Shiparski, that he does not represent the developer. He said Mr. Ryan, the Realtor is also here. He said, “The developer, Mr. Randy Bouwkamp, not present, is looking to develop the site and said he would like to put a resort on the location where Nickerson Inn was formerly located. The problem became apparent in early communication with the village that while you have district called a hotel resort, no place that I could find in your ordinances, was “resort” defined; what he clearly does not want to have is a motel; motels are something different, likewise he does not want condominiums; condominiums are something different. The developer has suggested to us that he would like to put on this place is a temporary housing with accessory activities located for primarily those people that are temporarily abiding at this location.”

Schrier: “We raised that and a number of other questions; other questions we have not appealed; we agree they probably are irrelevant; how many parking spaces get decided, depending what you do on allowing a resort in a resort hotel area, likewise multiple ownership, doesn't matter.” “The real issue for you is, can we put a resort in a hotel resort area?” “ I certainly understand the zoning administrator's comments and her letter.” “How do we move forward with this issue?;” “ we don't disagree with you.” “With all due deference, to your zoning administrator, we think she is wrong.”

He said, “We think if you look at the definition of a hotel and put the focus on what we believe is the intent of that ordinance we believe a temporary abiding place that has accessory uses exclusively not limited to gift shops, restaurants, other similar uses is what you have defined and

included in a hotel is what is going to be there.” “ Whether it has one building or multiple buildings that somebody would check into like any another resort with a central check-in and gets keys to where they will be temporarily staying and able use the amenities that are functionally located in that resort is exactly what is going to be there.” “ I think we tried to lay out in the correspondence what our position is, and we think this is the body that can say, no that it includes multiple buildings as long as temporary abiding, and so long as temporary uses, is associated with that function; an integrating resort.”

### **Questions from the board**

(Q) (Damon Crumb) “What kind of accessory activities besides a restaurant?”

(A) (John Schrier) “What the developer has indicated, was things like a pool, perhaps gift shop, certainly other amenities people staying at that location might be interested in.” and “ Hesitant to say, and might be unfair that the lawyer for the Shiparskis said you wanted “X” and then months later instead of a pool want a hot tub.”

(Q) (Crumb) “Is there any reason he is not here tonight?”

(A) (Schrier) “Mr. Bouwkamp is unavailable, he’s out of town, we didn’t want to push this back another month or longer.”

(Q) (Gay Birchard) “I’m not clear on what you’re talking about, a hotel; most people think of as one building, a rectangular shaped building, but keep talking multiple buildings; what does that mean?”

(A) (Schrier) “More than 1 building.”

(Q) (Gay) “Yes, for what purpose?”

(A) (Schrier) “For people to stay, for people to check in, and stay on a temporary basis.”

(Q) (Gay) “So you’re you talking about cottages? That's different than a hotel.”

(A) (Schrier) “My assumption... my problem is, how hotel is defined here at this locale and how motels are defined at this locale.”

(Q) (Gay) “I’m talking about multiple buildings.”

(A) (Schrier) “ Multiple buildings would be a motel, except, you can’t have accessory uses in a motel district and so we think the closest this fits, to anything is in a hotel, because the primary other accessory uses that are provided.” “This is not going to be a Travel Lodge, this is not going to be Super 8 I’ll agree with you this isn’t going to be the a Marriott either. “ “It’s not what the developer has in mind.”

(Shotwell) "One of the concerns I have is talking about something that we have not yet seen a sketch, or some kind of layout, to help define for us how the units or individual lodgings are integrated." "Through paths or connecting communications." "We have not seen any sketches to help understand better what the developer is talking about."

(A) (Schrier) "As Mr. Bouwkamp indicated to us is that he is reluctant to spend the money, which is not insignificant, to do the design plan when he is not sure he can even do that, that's the first obvious problem, and beyond that I think, that's the primary problem; he has described his plan which is the multi buildings, integrated. My analogy, which is probably not necessarily, not a very good one, because it is way too big for the concept of that location is a Crystal Lodge, with multiple buildings that are functionally integrated with accessory uses, etc.. Can you put up a Crystal Lodge?" "No. I get that." "Might look like a cottage, might look like a separate hotel, might."

(Castor) Advised the board that, "We are looking at an administrative decision from Sara."

(Schrier) "Certainly, if we are granted either here or in some other location, we'll be back in front of some public body regarding the site line, of this exactly, is what is going to be located."

No other questions.

Next presenter:

Rich Studley: 97 Plymouth. Stated that the rear lot line of his property is the side lot line of the Nickerson Inn, and his property would be greatly impacted. He purchased his property 15 years ago and repeatedly was assured that the sole purpose of the C4 zoning district was to accommodate a preexisting unit, a grandfather use that predated the zoning board. He said that Mr. Shiparski is entitled to the use of his property, but is not entitled to exploit that property at the expense of his neighbors and jam a large commercial development in the middle of a residential neighborhood. He concluded that Sara, the zoning administrator, has made a fair decision and ask the board to accept that decision and reject the appeal. He said that he knows what it's like to be living near the Nickerson Inn, especially holiday weekends with the noise and traffic problems in that area, and if approved, the appeal would open the door to a large commercial development in a residential neighborhood. He said that the overflow parking on busy and holiday weekends uses private driveway and his yard. He said the lots area covered by the protected sand dunes act, so he could not imagine the damage to surrounding properties with soil erosion, and sediment control. He said that the zoning administrator was asked beyond her authority to write in a law a blank check for the developers to do whatever they liked, whenever they liked, which raises serious questions of what kind of place this could be. He said that when he was submitting for a permit, was asked for three sketches and a site plan and drawing to build a single family home. He said that he does not think we have enough information to overrule the administrator, and when he went to a readily available dictionary found "resort" described as a destination location place providing recreation and entertainment especially to vacationers. He has heard reference tonight

of an unknown number of accessory buildings, of unknown size and type. He said this is not a 10 or 20 acre parcel, and you're going to have law enforcement problems, fire protection problems, and noise; you just grin and bear it including the smashing of bottles one at a time, referring to an incident he described from the past., and said, "I'm entitled to reasonably use of my property, and every time I look at that property, a dark cloud of economic uncertainty hangs over it." "The sign on the property says it's the end of an era, and asks to make it clear that it is not open to a large commercial development that would come at the expense of the surrounding property owners in the middle of a residential are." "Let's put an end to this one way or another."

No questions from the board.

(Shotwell) "One point, our role tonight is not to rule on what might happen on that property only that our zoning administrator properly exercised her duty in responding to the request. We have more limited scope than what might happen if developer would go back to the planning commission."

(A) Studley: "My concern if you accept the appeal would open a door to a Pandora's box of unknown consequences."

Shotwell agreed.

Ted Cuchna, 529 Clymer: said that in his 50 years of construction, there was a weakness in our ordinance regarding the site plan; he then asked the board members, "Since December 15, how many looked at your MI Zoning Book, particular pages 28 through 30 or 29?" Only one had raised their hand. He then asked, "What does it say about spot zoning, the attorneys say by omission we neglected to put a motel definition there, I think by commission we have not put motel, or hotel/resort side particularly to the limited spaces in town. The idea of not putting pencil to paper; permit or request for a variance, ordinance or site change, they do mention site plan thoroughly, even if it's a hand sketch on the back of the request. The subterfuge or response that it cost too much money to make a layout, and also the attorneys failed to ask: is it a condominium type operation; would it be time share, individually owned, short term or long term rental and what facilities go with it, fully integrated, or functionally integrated (?); is a smoky response. "What does that mean, one owner, multiple owners?" "It's a very gray area, and I think the ordinance speaks for itself." "It says Hotel." "We don't have resort definition, because, we never contemplated a resort. The C4 particularly for the Nickerson, so it could be a hotel with a liquor license because it expanded. Now read into the zoning ordinance is reaching!"

No questions from the board

Other presenters' comments:

Ken Matheson, 116 W. Lowell, stated that he owned the property for over 50 years, and believes the board should uphold the zoning administrator's decision. He then said that reading what is being proposed; "We don't know how many buildings, predominately assumes that something else will be there; temporary has no definition whatsoever. Abiding place means someone will stay there, with accessory uses; could be a fish cleaning station, or worse!" He again said, "Which is functionally integrated... we don't know what that means to argue." He said that he believes the board should uphold what has been decided, and asked to agree to something or change something that nobody knows what it is and they would be back if disagreed, with many, many, more problems."

No questions from board.

Bill Maxwell, 670 East Fifth; said, "If accessory buildings; does that include a restaurant?" "The difference between motel and hotel... motel does not have to supply food; a resort does have to supply food." "We're asking these people to make a decision on a lot of things that are smoky and we don't know." "There are so many unanswered questions. " "We hired Sara to do a job and she did it."

No questions from the board.

No other comments

Motion to close public hearing by Gay Birchard; second: Keith Wells. Roll call vote. All ayes. Motion carried.

## **CLOSE PUBLIC HEARING:**

### **Old Business:**

- A. Training: The Board wanted Bizon to look into training. LSL Planning proposed two and a half hours for eight hundred dollars and trying to arrange training to accommodate the request within the budget to also include the Planning Commission. Mike Castor asked if the Township was interested. Sara responded, no, they were not interested; they had already had training earlier.

### **New Business**

- A. Administrative Appeal: 262 Lowell Street – Parcel 64-044-425-005-000:  
Discussion/Comments from the board: Castor reminded the board that they're looking at the decision made by the zoning administrator, not to modify the ordinance, not to grant a variance. Attorney: Gary Nicolson reminded the board that the zoning administrator was asked three questions and that they are dealing with only one question.  
Norm Shotwell: Put in context what has been defined and doesn't fall into the ordinance. He said they're trying to shoehorn something that doesn't fit and is not appropriate.

“Pentwater is a resort town, beautiful residential area, needs to have people to support our activities for both residents and holiday enjoyers and property within the bounds of our ordinances, concerned with multiple ownership and multiple facilities and cooking facilities; how does that rack up as a hotel or resort? It doesn’t meet our requirements.”

Damon Crumb: supports Sara regarding three questions asked, done excellent job, multiple buildings not permitted in this zone, her answer, reply to the three questions was very fair.

Gay Birchard: Supports her decision.

Earl Raczkowski: “Attorney has already mentioned and answered the question.” Support.

Keith Wells: “She has done an excellent job. “ Accepts what she has given to us.

Mike Castor: “Following the strict interpretation of the ordinance; is fair and correct. “

Motion to support zoning administrator’s decision; Keith Wells, second; Damon Crumb.

Roll call vote: All Ayes. Motion carried.

- B. Special Meeting, April 11 request to consider a variance request; information in packet. Motion by Norm Shotwell for special meeting, April 11; support Damon Crumb.
- C. Public Letters (copies in packet) submitted; Damon Crumb: Not all regarding tonight’s appeal. Gay said the letters were sent to this board in good faith and asked if it was fair to pass them to someone who has the power to answer their questions. Castor stated that the final decision is; the letters have been sent for the purpose of this meeting and are a part of this record per the suggestion of our attorney.

## Adjournment

Motion to adjourn by Shotwell, second by Crumb.

Chair Mike Castor adjourned the meeting at 7:55PM

Respectfully submitted by,

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Barbara Gremchuk  
Deputy Clerk/Treasurer

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Date