



VILLAGE OF PENTWATER

ON PENTWATER LAKE AND LAKE MICHIGAN

65 South Hancock Street, P.O. Box 622, Pentwater, Michigan 49449

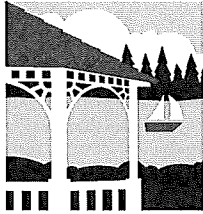
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**Village of Pentwater Zoning Board of Appeals Meeting
Tuesday, March 18, 2025 at 6:00 pm
310 N. Rush Street Pentwater, MI 49449**

Agenda

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Approval of Agenda
- V. Approval of the Minutes of the February 18, 2025 Meeting
- VI. Public Hearing - None
- VII. Correspondence / Public Comments
- VIII. Unfinished Business - None
- IV. New Business
 - A. Rexford Property ZBA Determination
- X. Adjournment



VILLAGE OF PENTWATER
Zoning Board of Appeals

65 South Hancock Street – P.O. Box 622
Pentwater, Michigan 49449
(231) 869-8301

Regular Meeting Minutes – February 18, 2025
Park Place - 310 N. Rush St., Pentwater, MI 49449

Chairperson Bainton called the meeting of the Pentwater Zoning Board of Appeals to order at 6:00p.m. with the Pledge of Allegiance.

ROLL CALL: **Present:** Joe Roberson, Ron Stoneman, Lisa Wells and Bill Bainton.
 Absent: Peter Dunlap

Others present: Zoning Administrator, Katie Anderson and Village Attorney, Brian Monton.

APPROVAL OF AGENDA:

Motion by Lisa Wells, second by Ron Stoneman to approve the agenda as presented.
Voice Vote: Ayes: 4 Nays: 0 Absent: 1 **Motion carried.**

APPROVAL OF MINUTES of January 22, 2025:

Motion by Lisa Wells, second by Ron Stoneman to approve the minutes of January 22, 2025 as presented.
Voice Vote: Ayes: 4 Nays: 0 Absent: 1 **Motion carried.**

PUBLIC COMMENTS (Items on the Agenda): None

PUBLIC HEARING:

Each Party submitted written arguments and documentation for the hearing, which are included in the record.

Tom Grier, Attorney representing Ken Pryor, and Kurt Lohss stated his case.

- Tom Grier introduces himself as the representative of Ken Pryor and Kurt Lohss, explaining that Kurt Lohss is ill and unable to attend.
- A PowerPoint presentation was given to streamline the presentation.
- The properties involved are located on Lake Road, with Ken Pryor at 789, Kurt Lohss at 796, and Rexford at 801.
- Tom Grier provides a plat map and aerial photograph to show the location and layout of the properties, a photograph of the boathouse before and after the construction of the roof deck, highlighting the changes.
- He explains that the boathouse is not conforming to the zoning regulations, as it is too close to the water's edge and lacks a side yard setback.

- The zoning ordinance prohibits accessory buildings in the front yard of waterfront lots unless the property is at least 250 feet long.
- Tom Grier argues that the boathouse is obtrusive and non-conforming due to its location and construction.
- Tom Grier presents an appraisal by Steve Nichols, who determined a loss of value for the properties due to the boathouse.
- The appeal is based on the belief that false statements were made in the September 15, 2023 zoning permit application.
- The timing of the construction and the delay in addressing the issue are highlighted, with objections raised in September 2023 and further objections in October 2024.
- The village manager's decision of November 5, 2024, is being appealed, as it did not find false statements in the application.
- Tom Grier explains the legal framework for appealing the village manager's decision, citing specific sections of the zoning ordinance. He argues that the Village Manager acted as an administrative officer in making her decision.
- The appeal seeks to reverse the Village Manager's fact determination, revoke the permit, and remand the case back to the Planning Commission.
- Tom Grier emphasizes the importance of due process and the need for proper notice to adjoining property owners when expanding non-conforming buildings.

Cal Miller, Attorney representing Peter and Ann Rexford stated his case.

- Cal Miller, representing Peter and Ann Rexford, argues that the appeal is untimely and lacks standing.
- He questions the authority of the Village Manager to make a zoning determination and the validity of the appeal.
- Cal Miller highlights the lack of evidence showing that the boathouse had a pre-existing deck, as claimed in the application.
- He suggests that the appeal is based on conjecture and that the Planning Commission made the correct decision.

PUBLIC COMMENTS:

Ken Prior, 789 E. Lake Rd. – What makes this case different is that on September 10, 2023, 90% of the work was already done without a zoning permit or a building permit. That was when the deck was put on and that is when I filed a complaint with the Zoning Administrator. Hopefully, I was going to hear something back, I thought. There were eight railings, eight vertical posts, that were put up and those were taken down. Kurt Lohss and I thought that the project was done and even though the deck that was put on was there. When we talk about my Facebook view, that is off my living room. I have not slept since October, because this is my retire home and this is what I have to look at. It's one thing to look at a structure there, it's another thing to have to look at people on top of that structure. The November 5th letter from Rachel, she took over as far as Katie's responsibility, put together this letter. Her (Rachel) and Brian got together and made a comment that I did not have a preponderance of evidence. Kurt Lohss got in the picture and came up with all these drone shots (of the property) and presented it to the Village on November 18th, after the November 5th letter. Talking to Council members, amongst each other, is this new evidence after the November 5th letter. I was encouraged to come to the ZBA to present my case. I applied with Katie Anderson, Zoning Administrator; she and Brian got together and accepted it. I am going to apologize for being so upset at previous meetings, this is hard to live with. This is my retire home and I do apologize for a lot of that stuff. I think that if Mr. Rexford would look at

the views of not just my house but also Kurt's house, he wouldn't have done this project. 90% of the work was done without a permit, most people apply for the zoning permit first and then you get all the details worked out. It was done after the fact, and I think there was misrepresentation done to change the story and that is what we are stuck with.

Lori Holladay, 7297 S. Lake Rd. Pentwater – I was with Kurt for a little over 10 years. I lived through John as the neighbor, Mac, and Peter. I am not quite sure if we are here because of the appeal or was there every anything on top of the garage (boathouse). Kurt and I were always on our deck, the second floor overlooked the garage (boathouse), there has never been anything on it and I have never seen anyone on it. There was a rickety ladder and never been anything on it. I don't understand how they could put a deck up there if it wasn't preexisting.

Jan Kile, 209 Cedar Dr. Mount Pleasant – I have been involved with Ken for 10 years, I know the area very well, including the people sitting here tonight. I know Ann and Peter as well. I have never seen anyone on that boathouse. My main concern is that they do rent the house out, Ann and Peter are there during the month of August, and if it is just them that would be fine. You can't believe the privacy we are losing when I go out on our deck now and look at the deck. It's not going to be just Peter and Ann; it's going to be during the month of July when they rent to people and that's my main concern. Number one, there never was anything there and then all of a sudden when I go out on the deck, I have to look at a structure and now we are going to have people on it. I think you know how close the proximity is to one another is an invasion of our privacy.

UNFINISHED BUSINESS:

A. Filed Appeal Against a Zoning Permit

Motion by Ron Stoneman, second by Lisa Wells to deny the appeal on the basis it is untimely.
Roll Call Vote: Ayes: Stoneman, yes. Wells, yes. Roberson, yes. Bainton, yes. Nays: 0
Absent: 1
Motion carried.

Motion by Lisa Wells, second by Ron Stoneman to deny the appeal that the individuals making the appeal were not aggrieved according to Section 18.07.B of the Village Zoning Ordinance.
Roll Call Vote: Ayes: Wells, yes. Stoneman, yes. Roberson, yes. Bainton, no. Nays: 0
Absent: 1
Motion carried.

Motion by Lisa Wells, second by Ron Stoneman to deny the appeal based on the fact that the permit submitted was not falsified by the applications.
Roll Call Vote: Ayes: Wells, yes. Stoneman, yes. Roberson, yes. Bainton, no. Nays: 0
Absent: 1
Motion carried.

- The ZBA members discuss the legal and procedural aspects of the appeal, including the authority of the Village Manager and the timeliness of the appeal.
- They consider the implications of the Village Manager's decision and the need for a thorough review of the evidence.
- The ZBA members discussed the timeline, questioning if it starts from the issuance of the permit from October 2023, the decision from the Planning Commission from September 2023, or the Village Manager's email response to Ken Prior from November 2024.

- The ZBA discussed the accuracy of the information provided in the permit application, considering the difference in verbiage between repair, replace and renovation in the application.
- Discussion was held the non-conforming nature of the accessory building and its impact on the view, considered the legal protections for the view and the implications of changing a non-conforming structure.
- The ZBA discussed the perspective of looking at the deck and people on the deck versus people congregating in a backyard. There was discussion about if the view would be any more obstructed if a fence or arborvitae were planted along the lot line in the area of the boathouse.

NEW BUSINESS: None

ADJOURNMENT: Motion by Ron Stoneman, second by Lisa Wells to adjourn the meeting at 8:31pm. Ayes: 4 Nays: 0 Absent: 1 Motion carried.

Respectfully submitted by:

Katie Anderson

Katie Anderson, Zoning Administrator
Village of Pentwater

January 22, 2025

Approved by the Zoning Board of Appeals on _____.

**VILLAGE OF PENTWATER
ZONING BOARD OF APPEALS**

RE: Appeal of Administrative Decision Regarding Zoning Permit, 801 E. Lake Street, Pentwater, Michigan

Appellants: Ken Prior and Kurt Lohss represented by Attorney Thomas A. Grier, Running Wise Law Firm

Hearing Date: February 18, 2025

Hearing Location: 310 N. Rush Street, Pentwater, Michigan

Members Present: Bainton (Chair); Wells; Stoneman; and Roberson

Members Absent: Dunlap

Property Owner: Peter and Ann Rexford represented by Attorney Cal Miller

FINDINGS OF FACT

The property that is the subject of this Appeal is owned by Peter and Ann Rexford and located at 801 E. Lake Street (Rexford Property). The Rexford Property is zoned R-2 Single Family Residential according to the Village of Pentwater Zoning Ordinance (ZO). Appellant Kurt Lohss (Lohss) owns the property adjacent to the Rexford Property located at 795 E. Lake Street (Lohss Property). Appellant Ken Prior (Prior) owns the property adjacent to the Lohss Property located 789 E. Lake Street (Prior Property). All aforementioned properties contain frontage on Pentwater Lake.

The Rexford Property contains a 12' x 28' cement block constructed boathouse. The boathouse was constructed sometime in the 1960s and predates the enactment of the Village's ZO. In September 2023, the Rexfords began to conduct improvements to the roof of the boathouse. On September 10, 2023, Prior sent an email to the Village Zoning Administrator objecting to the

Rexfords' improvements to the boathouse. On September 11, 2023, the Zoning Administrator replied to Prior and indicated that she would investigate the matter.

On September 15, 2023, the Rexfords applied for a zoning permit which included the following description of the work to be done to the boathouse:

“Repairing and restoring boathouse deck space to comply with current code requirements improved steps and 42” safety railing.”

The zoning permit application also included a detailed site plan and illustration of the proposed work to be completed on the boathouse.

On September 26, 2023, the Planning Commission considered and unanimously approved the Rexfords' zoning permit application. Neither Prior nor Lohss appeared at the September 26, 2023 Planning Commission meeting to express their opposition to the Rexfords' permit request. Further, neither Prior nor Lohss sent correspondence to the Planning Commission to express their objections to the permit request. On October 12, 2023, EGLE approved the Rexfords' permit for the requested work to the boathouse. The zoning permit was issued by the Village Zoning Administrator on October 13, 2023.

The Village Zoning Administrator granted an extension of the zoning permit on October 11, 2024. Through numerous correspondence and contacts, Prior subsequently demanded that the Village revoke the Rexfords' zoning permit based on alleged misrepresentations contained in the September 15, 2023 permit application pursuant to ZO Section 19.07(F)(1). On November 5, 2024, the Village Manager emailed Prior and informed him that the Village would not revoke the zoning permit. On November 25, 2024, Prior responded to the Village manager via email. Prior's email notified the Village Manager that he was appealing the Village's refusal to revoke the zoning permit as expressed in her November 5, 2024 email. Prior specifically invoked ZO Section 18.07(B) and 18.03(A) as the basis for his appeal.

APPLICABLE LEGAL AUTHORITY

I. Jurisdiction and Legal Authority.

The Michigan Zoning Enabling Act (MZEA), Act 110 of 2006, MCL 125.3101 *et seq.*, provides in section 604 that:

(1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under this act. The zoning board of appeals shall state the grounds of any determination made by the board. MCL 125.3604(1).

MCL 125.3604(5) and (6) provide that:

(5) If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request. Notice shall be given as required under section 103. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) and given to the person making the request as provided in section 103(3).

(6) At a hearing under subsection (5), a party may appear personally or by agent or attorney. The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.

ZO Section 18.03(A) provides that the ZBA shall have the following specified duties and powers:

Appeals: The Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator or other administrative officer or body of the Village in the administration of this Ordinance.

ZO Section 18.07(A) and (B) provide that:

- A. The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirements, decisions or determination made by the Planning Commission or other official or body charged with the administration of this Ordinance.
- B. Appeals to the Board of Appeals may be taken by any person aggrieved, or by an officer, department or board of the Village. Applications for appeals shall be filed within twenty-one (21) days after the date of the decision that is the basis of the appeal. The appellant must file with the Zoning Administrator a notice of appeal specifying the nature and

grounds for the appeal. The Zoning Administrator shall transmit to the Board of Appeals all papers constituting the record of the action being appealed.

To meet the “aggrieved” standard, an appellant must show they:

1. participated in the challenged proceedings by taking a position on the contested decision, such as through a letter or oral public comment;
2. have a legally protected interest or protected personal, pecuniary, or property right that is likely to be affected by the challenged decision; and
3. have evidence of special damages arising from the challenged decision in the form of an actual or likely injury to or burden on their asserted interest or right that is different in kind or more significant in degree than the effects on others in the local community.

See *Saugatuck Dunes Coastal All v Saugatuck Twp*, 509 Mich 561, 585, 983 NW2d 798 (2022).

II. Applicable ZO Provision.

Prior and Lohss assert that the Village Manager and/or the Zoning Administrator were required to revoke the zoning permit based on alleged misrepresentations made by the Rexfords in the September 15, 2023 zoning permit application. Prior and Lohss specifically invoke ZO Section 19.07(F)(1), which provides that:

The Zoning Administrator shall have the authority to revoke or otherwise cancel any zoning permit issued in cases of failure and/or neglect to comply with any of the provisions of the Ordinance, conditions of approval, or in the case of false statement or misrepresentation made by the applicant.

DETERMINATIONS

Based upon the evidence/documents submitted into the record and statements made at the hearing held on February 18, 2025, the ZBA makes the following determinations with respect to Prior and Lohss’ request to revoke the zoning permit issued to the Rexfords:

1. The ZBA finds that this appeal is in practical effect an attempt to appeal the Planning Commission’s September 26, 2023 decision to issue the zoning permit and was, therefore, untimely filed pursuant to ZO Section 18.07(B), which requires that appeals be made

within 21 days after the date of the decision that is the basis of the appeal. For this reason, the appeal is denied.

2. The ZBA finds that Prior and/or Lohss failed to demonstrate that they are “person[s] aggrieved” according to the requirements set forth in the Michigan Supreme Court’s decision in *Saugatuck Dunes Coastal All v Saugatuck Twp*, 509 Mich 561, 585, 983 NW2d 798 (2022), cited above. For this reason, the appeal is denied.
3. The ZBA finds that the Rexfords did not make materially false statements or misrepresentations of fact in their zoning permit application to the Village or its Planning Commission to induce or cause the Planning Commission to approve the zoning permit. For this reason, the appeal is denied.

Based independently on each of the above determinations, Appellants’ request that the ZBA “reverse the Village Manager’s Determination and 1) declare that the Rexfords’ September 15, 2023 Zoning Permit Application did contain false statements or misrepresentations and 2) order the Zoning Administrator to revoke all permits issued to the Rexfords to allow the deck expansion to the Boathouse” is denied. This determination is a final determination and resolves all issues before the ZBA regarding this matter.

The above findings and determinations were unanimously approved by the ZBA members present at the February 18, 2025 hearing.

Dated: March ____, 2025

William C. Bainton, ZBA Chairman