



CHEBOYGAN COUNTY ZONING BOARD OF APPEALS

870 SOUTH MAIN ST. ■ PO BOX 70 ■ CHEBOYGAN, MI 49721
PHONE: (231)627-8489 ■ FAX: (231)627-3646

**CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING
WEDNESDAY, DECEMBER 26, 2018 AT 7:00 P.M.
ROOM 135 – COMMISSIONERS ROOM
CHEBOYGAN COUNTY BUILDING, 870 S. MAIN ST., CHEBOYGAN, MI 49721**

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

PUBLIC HEARING AND ACTION ON REQUESTS

1. **Zoning Board of Appeals Interpretation** - A request for an interpretation from the Zoning Administrator to determine if the term "altered" in Section 22.1 of the Zoning Ordinance (Non-conforming Uses, Structures) does not prohibit the addition of property to increase the size of an otherwise non-conforming lot of record that is non-conforming solely with minimum lot size requirements as provided for in the Zoning Ordinance.

UNFINISHED BUSINESS

NEW BUSINESS

ZBA COMMENTS

PUBLIC COMMENTS

ADJOURN

CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING
WEDNESDAY, SEPTEMBER 26, 2018 AT 7:00PM
ROOM 135 – COMMISSIONER’S ROOM - CHEBOYGAN COUNTY BUILDING

Members Present: Charles Freese, Ralph Hemmer, John Moore, John Thompson, Nini Sherwood

Members Absent: None

Others Present: Michael Turisk, Jeff Fitzgerald, Evan Perry, Cal Gouine, Russell Crawford, Cheryl Crawford, Karen Johnson, C. Maziasz, Carl Muscott, David McDade

The meeting was called to order by Chairperson Freese at 7:00pm.

PLEDGE OF ALLEGIANCE

Chairperson Freese led the Pledge of Allegiance.

APPROVAL OF AGENDA

The agenda was presented. **Motion** by Mr. Moore, seconded by Mr. Hemmer, to accept the agenda as presented. Motion carried unanimously.

APPROVAL OF MINUTES

Minutes from the August 22, 2018 Zoning Board of Appeals meeting were presented. **Motion** by Mr. Moore, seconded by Mr. Thompson, to approve the minutes as presented. Motion carried unanimously.

PUBLIC HEARING & ACTION ON REQUESTS

Zoning Board of Appeals Interpretation - A request for an interpretation by the Zoning Board of Appeals to determine if Gratiot St. in Tuscarora Township is a minor residential street for the purpose of serving a future proposed Special Use for a restaurant/bar. Per Section 18.7.f. of the Zoning Ordinance, minor residential streets shall not be used to serve as access to uses having larger area-wide patronage.

Mr. Turisk presented information provided in the staff report.

Mr. Freese presented the discussion topic:

The term “Minor Residential Street” is not defined in the Zoning Regulation No 200 and therefore must be determined by the words used and the context in which they are used. “Minor” when used in conjunction with the county road terminology could only be associated with the lowest county road class “County local” as opposed to what might be considered “major” i.e. “County Primary” or “State Trunk Line” designations.

This term “Residential” cannot obviously be applied to a road and must therefore be intended to apply to the uses permitted on parcels abutting the road to be defined. A literal interpretation would then be: A county local road abutted by parcels with residential usage. Since “Residential Dwelling” is a use authorized in all zoning districts in the county, the broad literal translation would not be consistent with that intended, since the definition could be applied to most county local roads over a portion or all of the length and would not provide the restrictions intended. A minor local definition would use the term residential in relation to the zoning district created for residential uses i.e. D-RS. The definition resulting from this analysis must be considered in the context in which it is applied. The term minor residential street is used only once in the regulation and that being Section 18.7.f. which governs the conditions which must be met in order to grant a special use permit. The sentence in which it is used reads “ Minor Residential Streets shall not be used to serve or access to uses having larger area-wide patronage” The restrictions in this sentence cannot be applied to the “Street” by a zoning regulation since any limitations on a county road can only be placed by the County Road Commission or the Michigan State Police. The zoning regulation could be utilized to restrict the uses authorized for parcels which abut the road in question in the district thru which the road runs. The sentence is extremely restrictive since it would prohibit any use which would draw traffic from outside the immediate area. If this restrictive interpretation is accepted is would effectively exclude almost all uses requiring a special use permit drawing patronage from a wide geographical area, e.g.

- 4.3.2 Nurseries and Day care centers
- 4.3.6 Parks, playgrounds, golf courses and other recreational facilities
- 4.3.9 Public non-commercial recreational camps
- 4.3.11 Marinas
- 4.3.12 Assembly, educational or social event facilities
- 4.3.13 Planned projects subject to provisions on Section 17.20

Since the restrictive language can only be applied to uses requiring a SUP under section 18.7, it could not be applied to users permitted by right in the same district which would also draw traffic from a larger geographical area, e.g.

4.2.6 Home Occupations

4.2.7 Office or studio of a physician dentist or other professional person residing on the premises

4.2.10 State licensed residential facilities (6 or less)

The language "shall not be used to serve as access to uses having larger area-wide patronage" would preclude any road from being designated a "Minor Residential Street" if it serves as the only access to another road which has no other exit and which abuts parcels which are zoned for use which necessitate larger area-wide patronage.

The term "Minor Residential Streets" is obviously intended to restrict traffic in areas of predominately residential dwellings. However residential dwellings along a road do not create a de facto residential zoning district. A large proportion of the general public believes this to be the case. If this result is desirable, the area could be rezoned D-RS. Uses permitted by right or with an approved special use permit should not be unnecessarily curtailed or prohibited because of the proximity of private dwellings. The first sentence of Section 18.7.f read:

The proposed special land use shall not increase traffic hazards or cause congestion on the public or private highways and streets of the area in excess of current capacity. Adequate access to the site shall be furnished either by existing roads and highways or proposed roads and highways.

These conditions allow the prevention of the uses proposed by an SUP from exceeding the capacity or creating a traffic hazard on the road upon which they are to be located. The goal as outlined in the Cheboygan County Master Plan to promote growth and development by the zoning ordinance, the infrastructure necessary to support and the uses and locations permitted by zoning should be developed to the greatest extent possible with the resources of the county. This infrastructure includes roads, sewers and other utilities. Infrastructure should not govern zoning, but rather should support the growth and development permitted by zoning. Any necessary curtailments to uses permitted by zoning because they outstrip the capacity of the infrastructure are permitted and governed by the provisions of section 18.7.f.

Mr. Freese asked for public comments. There were no public comments. Public comment closed.

Mr. Freese presented the following General Findings:

1. County Road Have three classifications:
 - a. State trunk lines
 - b. County primary roads
 - c. County local roads
2. Gratiot Street is classed as a county local road which begins at its north end at its intersection with South Straits Highway and runs south approximately 2470ft. south, gradually diverging from South Straits Highway, at which point it makes a 90 degree turn to the west and becomes Hemlock Street.
3. Hemlock Street runs for 420ft. west, where it crosses South Straits Highway.
4. Apple Blossom Street begins at its intersection with Gratiot Street and runs east for 290ft. where it then turns north until it terminates at the Indian River Marina.
5. The Commercial Zoning district extends 600ft. on either side of South Straits Highway in this area.
6. The entire length of Gratiot Street and the parcels abutting it to the east and west lie within the Commercial Zoning district except parcel #162-019-100-032-00 which is addressed as 3249 Gratiot Street and extends to the Indian River. The western portion of this parcel lies in the Commercial Zoning district and the eastern portion lies in the Lake and Stream Protection Zoning District.
7. The north end of Gratiot Street is developed commercially with commercial indoor storage units on the west side and an electrical power distribution facility on the east side.
8. South of the commercial uses at the north end the remaining parcels on Gratiot Street are used for residential dwellings or are undeveloped.
9. Parcels abutting Apple Blossom Street are used for residential dwellings with the exception of the Indian River Marina at its north terminus which is a commercial use.
10. Gratiot Street is the only route to Apple Blossom Street and therefore the Indian River Marina which is not accessible by any other road access.
11. A bar and restaurant are uses authorized by a special use permit in both the Commercial Development and the Lake and Stream Protection Zoning Districts.
12. The term "minor residential street" is not defined in Zoning Ordinance No. 200.
13. The Cheboygan County Road Commission and the State Police are the only entities that can place restrictions on county roads through the weight restrictions, seasonal limitation load limits, frost laws, parking and signage or other uses with the right of way.

Motion by Mr. Freese, seconded by Mr. Moore, to accept the final definition of the term “minor residential street” to read “A county local road in the D-RS zoning district which does not serve as a thru street from and to other zoning districts and is not the only access to intersecting roads which have no other outlet and are abutted by parcels with permitted uses which require access to wider-area patronage. A road can only be designated as such if parcels abutting it are restricted to uses which only generate local traffic.” Motion carried unanimously.

Motion by Mr. Thompson, seconded by Mr. Moore, that Gratiot Street is determined not to be a minor residential street. Motion carried unanimously.

Motion by Mr. Freese, seconded by Mr. Moore, to recommend to the Planning Commission that Because of the extreme limitations required by this term, it is recommended that the subject be referred to the Planning Commission with a recommendation that Section 18.7.f be amended by deleting the sentence containing the term “Minor Residential Streets”. The designation of a road by this term would necessitate the area bordering such road to be restricted to a residential zoning district with virtually only those uses permitted by right, in effect, a new zoning classification. Motion carried unanimously.

Shorestone Custom Builders/Mansfield – The applicant requests approval of an approximately 103-ft. front setback variance to construct a new porch on a waterfront property in a Natural Rivers (P-NR) zoning district. Per Section 17.1 of the Zoning Ordinance, a minimum of 200-ft. of front setback is required for waterfront lots in the P-NR zoning districts. The subject property is located at 4707 Big Sky Trail in Koehler Township, Parcel No. 172-P23-000-024-01 (Plat of Pigeon River Woods; Lot 24), Section 27.

Mr. Turisk presented information provided in the staff report.

Mr. Freese asked for public comments. There were no public comments. Public comment closed.

The Zoning Board of Appeals revised the following General Findings:

2. The Zoning Ordinance requires a minimum 200 ft. front setback for new construction in the P-NR zoning district for mainstream lots.
3. The applicant is seeking a 97ft. front setback variance from the Pigeon River to construct a new, attached porch measuring 6ft. 8in. x 8ft. 8in.

The Zoning Board of Appeals added the following to the General Findings:

5. The proposed variance is in the rear setback area. Construction Code requires an entrance porch of at least 3ft. x 3ft. and ADA requires a 5ft. x 5ft. porch for a main entrance.
6. Past precedent has established that the DNR has not had any objections to new construction which does not extend further into the front setback than that of the existing legal non-conforming structure.

The Zoning Board of Appeals reviewed and approved the Findings of Fact and the Specific Findings of Fact under Section 23.5.4. **Motion** by Mr. Moore, seconded by Mr. Hemmer, to approve the variance request based on the General Findings and the Specific Findings of Fact under Section 23.5.4. Motion carried unanimously.

UNFINISHED BUSINESS

No comments.

NEW BUSINESS

No comments.

ZBA COMMENTS

No comments.

PUBLIC COMMENTS

Mr. Muscott stated his concerns regarding Cheboygan County’s regulation being more punitive than the State of Michigan’s regulation regarding Natural Rivers. Mr. Freese stated that Cheboygan County’s regulation can be more restrictive, but not less restrictive. Discussion was held.

Mr. Muscott stated that the owner of The River Deck originally spoke with Scott McNeil in February of 2018 and submitted a special use permit application in July of 2018. Mr. Muscott stated his concern regarding the delay in processing the special use permit application. Mr. Freese explained that there has been a delay due to the ZBA interpretation of the minor residential street. Discussion was held.

Mr. Freese explained that the variance request for Mansfield could not be approved administratively using the State regulation for a minor variance. Mr. Freese stated that according to the State a minor variance is 25% of the setback. Mr. Freese noted that 97ft. would be over 40%. Mr. Freese stated the Planning Commission should look at the State's regulation to allow the Zoning Administrator to review these types of applications. Discussion was held.

ADJOURN

Motion by Mr. Hemmer to adjourn. Motion carried. Meeting adjourned at 7:48 pm.

John Thompson, Secretary

DRAFT



CHEBOYGAN COUNTY PLANNING AND ZONING DEPARTMENT

CHEBOYGAN COUNTY BUILDING ■ 870 S. MAIN STREET, PO BOX 70 ■ CHEBOYGAN, MI 49721
PHONE: (231)627-8485 ■ FAX: (231)627-3646
www.cheboygancounty.net/planning/

To: Zoning Board of Appeals

From: Michael Turisk, Planning Director

Subject: Request from the Zoning Administrator for an interpretation of Section 22.1 of the Zoning Ordinance.

Date: December 19, 2018 for the December 26, 2018 regular meeting.

A question has recently arisen regarding the intent of the term “altered” in Section 22.1 of the Zoning Ordinance (Non-conforming Uses, Structures). Specifically, does the term prohibit the addition of property to increase the size of an otherwise non-conforming lot of record that is non-conforming solely with minimum lot size requirements as provided for in the Zoning Ordinance. In other words, would adding property to a non-conforming lot that would result in a “more conforming lot” (or “less non-conforming lot” if you prefer) be prohibited because the lot would remain non-conforming.

Recall the following Definitions that regard non-conformances per Article 2:

NONCONFORMING LOT OF RECORD

A lot of record which lawfully existed on the effective date of this Ordinance or lawfully exists on the effective date of any amendment to this Ordinance that is applicable to the lot of record and which fails to conform to the dimensional regulations of the zoning district in which it is located.

NONCONFORMING BUILDING OR STRUCTURE

A building or structure or portion thereof lawfully existing at the effective date of this ordinance, or amendments thereto, and which does not conform to the provisions of the ordinance in the zoning district in which it is located.

NONCONFORMING USE

An activity existing at the time of the enactment of this ordinance, on a lot or lots of record, which is not in conformance with the use regulations for the zoning district in which it is located according to the ordinance.

Enclosure: Article 22 (Non-conforming Uses, Structures)

ARTICLE 22. - NON-CONFORMING USES, STRUCTURES

SECTION 22.1. Lawful non-conforming uses or structures in existence or under construction at the time of passage of this ordinance may be continued but shall not be extended, added to or altered unless such extension, addition or alteration is in conformity with the provisions of this ordinance.

SECTION 22.2. If the cost of repair or replacement of a non-conforming use or structure which has been destroyed by reason of windstorm, fire, explosion or any act of God or the public enemy exceeds 50% of the total replacement cost of the use or structure, such use or structure shall not be continued or rebuilt except in conformity with the provisions of this ordinance.

SECTION 22.3. If the non-conforming use of any land or structure shall terminate for a continuous period of time exceeding one year, such use shall not be re-established and any future use of the land and structure shall be in conformity with this ordinance.

SECTION 22.4. If a non-conforming use is changed to a permitted or more restrictive use in the district in which it is located, it shall not revert or be changed back to a non-conforming less restrictive use.

SECTION 22.5. Notwithstanding the foregoing, a home located in a zone which does not permit the same may still be altered, expanded and/or rebuilt.

SECTION 22.6. Nothing in this ordinance shall prevent the strengthening of a lawful, non-conforming building or structure, or point thereof, which has been declared unsafe by the Zoning Administrator, building official or public health inspector, nor the requirement to adhere to the lawful orders of such individuals.

SECTION 22.7. No lot or lots, nor yard, court, parking space or any other space shall be so divided, altered or reduced as to provide less than the minimum allowable area and dimensions set forth in this ordinance. If such areas are already less than the minimum allowable area or dimensions set forth in this ordinance, they shall not be divided, altered or reduced further.

SECTION 22.8. (Rev. 04/26/08, Amendment #73)

Any nonconforming lot of record may be used for any purpose authorized within the zoning district in which it is located. Any structure or building constructed on the nonconforming lot of record shall meet all applicable setback and other dimensional regulations of the zoning district, unless a variance is obtained from the Zoning Board of Appeals pursuant to the procedures and standards of this Ordinance.