

ARTICLE 5 REVIEW AND DECISION MAKING BODIES

SECTION 5.1: PURPOSE

5.1.1 Purpose: It is the purpose of this Article to clarify the roles of the different boards and governing bodies responsible for review and decision making on applications for development approvals under the Port Sanilac Zoning Ordinance. The decision making entities included in this Article are the Village Council, the Village Planning Commission, and the Zoning Board of Appeals.

Each section in this Article identifies what responsibilities each review and/or decision making body has in the development review process. Where relevant and appropriate, the section also outlines the procedural rules governing the review body (e.g. rules about membership, composition, terms of office, filling vacancies, meetings and compensation).

SECTION 5.2: VILLAGE COUNCIL

5.2.1 Powers and Duties: In addition to any authority granted to the Village Council by charter, Ordinance, or state law (this provision is not intended to in any way limit the Village Council's power and authority), the Council shall have the following powers and duties under this Ordinance:

- A. Amendments to Ordinance Text and Zoning Map: To review, hear, consider and approve or disapprove:
 - 1. Text amendments: Petitions to amend the text of this Ordinance. See Article 18 "Amendments."
 - 2. Zoning Map amendments (Rezoning): Petitions to amend the Official Village of Port Sanilac Zoning Map.
- B. Initiate Amendments to Text and Zoning Map: To initiate petitions to the text of this Ordinance and the Zoning Map.
- C. Planned Unit Development Classification: To review, hear, consider and approve, approve with conditions or disapprove applications for Special Land Use permits for PUD classification.
- D. Special Land Use Permit: To review, hear, consider and approve, approve with conditions or disapprove Special Approval Use Permits.
- E. To take any other action not delegated to the Village Planning Commission, Zoning Board of Appeals or heads of Village departments, as the Village Council may deem desirable and necessary to implement the provisions of this Ordinance.

SECTION 5.3: VILLAGE PLANNING COMMISSION

5.3.1 Establishment: There is hereby established the Village Planning Commission pursuant to Section 301 of the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended.

5.3.2 Powers and Duties: The Village Planning Commission shall have the following powers and duties under this Ordinance:

- ~~A. Those duties described in the Michigan Planning Enabling Act (Public Act of 33 of~~

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2008), as amended, and the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended.

- B. Amendments to Ordinance Text and Zoning Map: To review, hear, consider and make recommendations to the Village Council to approve or disapprove:
 - 1. Text amendments: Petitions to amend the text of this Ordinance. See Article XII.
 - 2. Zoning Map amendments (Rezoning): Petitions to amend the Official Village of Port Sanilac Zoning Map.
- C. Planned Unit Development Classification: To review, hear, consider and make recommendations to the Village Council to approve, approve with conditions or disapprove applications for Special Land Use permits for PUD classification.
- D. Special Land Use Permit: To review, hear, consider and approve, approve with conditions or disapprove Special Land Use Permits.
- E. Site Plan: To review, hear, consider and approve, approve with conditions or disapprove site plans.
- F. Initiate Amendments to the Text and Zoning Map: To initiate petitions to amend the text of this Ordinance or the Official Village of Port Sanilac Zoning Map.
- G. Make Special Knowledge and Expertise Available: To make its special knowledge and expertise available upon written request and authorization of the Village Council to any official, department, board, commission or agency of the Village.
- H. Studies: To conduct studies of the resources, possibilities and needs of the Village upon the authorization of the Village Council, and report its findings and recommendations, with reference thereto, to the Village Council.
- I. Issue written opinions to applicants.
- J. Review and decide on uses purported to be similar in nature to permitted uses where so provided in this Ordinance.
- K. Maintain a Village map defining Village of Port Sanilac owned properties and beach access areas.
- L. Maintain a Village zoning map defining such use districts.
- M. Review and decide upon architectural theme plans.
- N. Maintain a Master Plan for potential growth, expansion or other change to the community.
- O. Planning Experts:
 - 1. With the approval of the Village Council, the Planning Commission may engage the services of a planning expert. Compensation for the planning expert shall be paid by the Village Council.
 - 2. The Planning Commission shall consider any information and recommendations furnished by appropriate public officials, departments or agencies.

5.3.3 Expenses and Compensation: Pursuant to Section 302 of the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended, members of the Village Planning Commission may be reimbursed for reasonable expenses actually incurred in the discharge of their duties and may receive compensation as fixed by the Village Council.

5.3.4 Membership: Members shall be appointed to the Village Planning Commission by the Village Council in accordance with the Planning Commission by-laws.

5.3.5 Quorum: No meeting of the Village Planning Commission shall be called to order, nor may any business be transacted without a quorum of members being present. If at any time during a public hearing a quorum is lost, it

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shall be stated in the minutes and no final action on a matter shall be taken by the Village Planning Commission.

5.3.6 Rules of Procedure: The Village Planning Commission shall, by a majority vote of the entire membership, adopt rules of procedure governing its procedures on such matters as officers, voting, meetings, compensation and related matters as it may consider necessary or advisable.

SECTION 5.4: ZONING BOARD OF APPEALS

5.4.1 Establishment: Pursuant to the provisions of the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended, the Port Sanilac Village Council shall perform the duties and exercise the powers of the Zoning Board of Appeals in order to ensure that the objectives of this Ordinance are observed, that public safety, morals and general welfare are protected and that substantial justice is provided.

5.4.2 Procedures:

- A. The Village President shall be the Chairperson of the Board of Appeals. Meetings of the Board of Appeals shall be held at the call of the Chairperson and at such times as the Board may determine as necessary and may be conducted as part of the agenda of any regular or special meeting of the Village Council.
- B. Meetings shall be subject to the provisions of the Open Meetings Act, open to the general public and conducted pursuant to and consistent with such rules of order as have been adopted by the Board of Appeals.
- C. A majority of the total membership of the Zoning Board of Appeals shall vote on every matter (no abstentions) unless a member has a conflict of interest. A member of the ZBA shall request to be disqualified from a vote in which the member has a conflict of interest. The member shall state the nature of the conflict of interest and the ZBA shall vote whether to excuse the member from participation because of a conflict of interest.
- D. Conflict of interest may include, but is not limited to: considering property a ZBA member owns or has a legal or financial interest in or adjacent property; considering a request by a party a ZBA member has close ties with, such as a relative, friend, boss, co-worker or neighbor. A fundamental issue is whether the member of ZBA believes he or she can objectively consider the request before the ZBA.
- E. The ZBA shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files, and other evidence pertinent to the matters before it, to the extent allowed by law.
- F. In addition to its regular minutes, the Council shall keep an independent record of these proceedings while acting as the Board of Appeals. All findings of the Zoning Board of Appeals shall be in writing, with a record of its proceedings showing the action of the ZBA and the vote of each member of each question considered.
- G. Determinations and findings of the ZBA shall be made in a reasonable time period.
- H. The ZBA shall file a record of its proceedings with the Village Clerk. The record of proceedings shall be a public record.
- I. The Zoning Board of Appeals may not conduct any business unless a majority of its membership is present.
- J. A majority vote of the total membership is necessary to reverse any administrative decision or grant a dimensional (non-use) variance or make a decision in favor of an applicant.

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5.4.3 Powers and Duties: The Village Council, in its capacity serving as the Zoning Board of Appeals, shall have the following powers and duties under this Ordinance:

- A. Those duties described in Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended;
- B. To review, hear, consider and approve, approve with conditions or disapprove variances;
- C. To hear, review, consider, and affirm, modify or reverse any order, decision, determination or interpretation of the Zoning Administrator or any other administrative official made under the terms of this Ordinance;
- D. To review, hear, consider and approve, approve with conditions or disapprove a change of one nonconforming use to another nonconforming use.

5.4.4 Jurisdiction: When acting as the Board of Appeals, the Village Council has the following jurisdiction:

- A. The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of this Ordinance, but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation, exception or special approval permit and to authorize a variance as defined in this section and laws of the State of Michigan.
- B. The Zoning Board of Appeals, in conformity with the provisions of the this Ordinance and the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended, may reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination appealed from and shall make such an order, requirements, decision, or determination as, in its opinion, ought to be made and to that end, shall have all the powers to hear and decide all matters referred to it or upon which it is required to pass under this Ordinance.

5.4.5 Fees: The required fees for a hearing before the Zoning Board of Appeals are a part of the cost of any zoning compliance permit and are in addition to other building permit fees. The required fees for any hearing before the Zoning Board of Appeals shall be paid as specified in Section 4.8 and certain additional expenses may be recovered if there are any over and above the amount of the required fee. Said costs shall include, but are not limited to: any additional hearings, the attendance of the Village Attorney at the hearing(s), engineering fees, and professional planner consulting fees, if applicable. An escrow may be collected to pay for these costs per the procedure in Section 4.8.

5.4.6 Appeals, Interpretations, and Variances: Subject to the provisions of Section 5.5, the Board, after public hearing, shall have the power to decide applications for appeals, interpretations, and variances filed as hereafter provided:

- A. Where it is alleged by the appellant that there is an error or misinterpretation in any order, requirement, decision, grant, or refusal made by the Zoning Administrator or other administrative office in the carrying out or enforcement of the provisions of this Ordinance, then an appeal or request for Ordinance interpretation shall be filed with the Zoning Board of Appeals on forms established for that purpose. In deciding a request for Ordinance interpretation, the ZBA shall ensure that its interpretation is consistent with the intent and purpose of the Ordinance, the Article in which the language in question is contained, and all other relevant provisions of the Ordinance. All Zoning Map interpretation questions shall be guided by the standards in Section 9.2.3.
- B. Where, by reason of the exceptional narrowness, shallowness or shape of a specific

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piece of property which existed on the effective date of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary situation or condition of the land, building, or structure, or of the use or development of property immediately adjoining the property in question, the literal enforcement of the requirements of this Ordinance would involve practical difficulties, provided that the Board shall not grant a variance on a lot of less area than the requirements of its zoning district, even though such lot existed at the time of the adoption of this Ordinance if the owner or members of the owner's immediate family owned adjacent land which could, without practical difficulty, be included as part of the lot.

- C. Where there are practical difficulties in the way of carrying out the strict letter of this Ordinance relating to the construction, structural changes in equipment, or alterations of buildings or structures, or the use of land, buildings, or structures so that the spirit of this Ordinance shall be observed, public safety secured, and substantial justice done.
- D. All appeals shall be submitted in writing to the Village Clerk and accompanied by a non-refundable filing fee set annually by Council resolution.
- E. Upon receipt of a proper application, the Council, as Board of Appeals, shall set a reasonable time and place for a hearing on the appeal and give proper notice thereof to the public and all affected parties, and render a decision without unreasonable delay.
- F. Appeals made from a determination of the Building Inspector or Zoning Administrator shall be made within thirty (30) days following such determination. Appeals from any other determination shall be made within sixty (60) days of such determination.

5.4.7 Public Hearing and Notification Requirement: Upon receipt of an application for an appeal, interpretation, or variance, the Zoning Board of Appeals shall hold at least one (1) public hearing, in accordance with the public hearing and public notice requirements set forth in the Michigan Zoning Enabling Act (Public Act 110 of 2006), as amended.

SECTION 5.5: VARIANCES

5.5.1 Dimensional or Non-Use Variance Standards: No variance in the provisions of this Ordinance shall be authorized unless the Zoning Board of Appeals finds, from reasonable evidence, that all of the following standards demonstrating practical difficulties have been met:

- A. Such variance will not be detrimental to adjacent property and the surrounding neighborhood;
- B. Such variance will not impair the intent and purpose of this Ordinance;
- C. Exceptional or extraordinary circumstances or conditions apply to the property in question or to the intended use of the property that do not apply generally to other properties in the same zoning district. Such circumstances shall create a practical difficulty because of unique circumstances or physical conditions such as narrowness, shallowness, shape or topography of the property involved, or to the intended use of the property. See Section 5.4.6(B);
- D. Such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance;
- E. The condition or situation of the specific piece of property or of the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature as to

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make reasonably practicable the formulation of a general regulation for such conditions or situation;

- F. The condition or situation of the specific piece of property or of the intended use of said property, for which the variance is sought, shall not be the result of actions of the property owner. In other words, the problem shall not be self-created;
- G. That strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome;
- H. That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship;
- I. That the variance will relate only to property under the control of the applicant.

5.5.2 Use Variances Prohibited:

- A. The Zoning Board of Appeals is hereby prohibited from granting a use variance for a use not permitted within a particular Zoning District. A use variance would allow a landowner to use the land for a purpose which is otherwise not permitted or is prohibited by the applicable zoning district regulations.
- B. The Zoning Board of Appeals shall only be authorized to issue dimensional or non-use variances in strict accordance with Section 5.5.1 above.

5.5.3 Conditions of Approval:

- A. In authorizing a variance, the Zoning Board of Appeals may impose specific conditions regarding the location, character, fencing, buffering or landscaping, or such other design changes as are reasonably necessary for the furtherance of the intent and spirit of this Ordinance and to ensure the protection of the public interest and abutting properties. To ensure compliance with such conditions, the ZBA may require a cash deposit, certified check, irrevocable bank letter of credit, or surety bond per the requirements of Section 4.8.

5.5.4 Lapse of Approval: Approval determinations made by the Village Council as the Board of Appeals shall become null and void one year after being filed with the Village Clerk if a building permit has not been issued and construction is not being actively pursued or if other applicable action has not been taken by the applicant. Determinations once voided, shall become the subject of a new appeal, and an application subject to all the requirements of the original applications, including a new filing fee, must be resubmitted.

5.5.5 Rejected Appeals: No appeal rejected by the Village Council as the Board of Appeals may be resubmitted for a period of six (6) months following such rejection, unless it can be demonstrated that new evidence bearing on the matter can be presented.