

Clearwater Township
Planning Commission
Regular Meeting of June 5, 2017
As approved July 10, 2017

Call to Order, Pledge of Allegiance:

Chair Parzych called the meeting to order at 7:03 pm, and opened with the Pledge of Allegiance.

Roll Call of Members and Recognition of Visitors:

Commissioners present: Backers, Eldridge, Fields, Parzych, Von See.

Township officials: Zoning Administrator Molby

Public: Denise Sincic, Steven Sincic, Gianine Casassa, Al Gross, Sallie Gross, Dianne Keelan, Jerry Keelan, Stephen Karas, Dave Hauser, Dave Lawicki, Michelle Campeau, Nicole Essad, Bruce Belanger, Judy Umlor, George Fulkerson.

Approval of Agenda:

MOTION by Backers, second by Von See, to accept the agenda as presented. Motion carried.

Call for Disclosure of Conflicts of Interests:

Chair calls for commissioners to disclose any real or potential conflicts of interests. All declared no conflicts of interests.

Approval of Minutes:

MOTION by Backers, second by Parzych, to accept the minutes of May 8, 2017 as presented. Motion carried.

Public Comment for Matters Not on the Agenda:

Michelle Campeau – came asking that consideration be given to a noise control ordinance. A nearby neighbor holds mass gathering over many weekends, with loud music beginning on Friday and continuing until Sunday or Monday, depending on the weekend. She stated that it's not a family event, but rather a commercial event, for which he charges, but that he's not been licensed for. Police have advised that only if the township has a noise ordinance will they take action. Ms. Campeau said that the police claim they have no authority to enforce against disturbance of the peace because the event is on private property. Ordinance 20 (Clearwater Township Road Ending, Public Access Site and Parks Ordinance), does have a prohibition against unreasonable noise.

Under Section 4 – Regulations, It does say that no person shall

(c) Use a road ending, public access site or township park in any manner that:

(2) Causes or creates any loud noise or sound that endangers or injures the safety or health of humans or animals or that annoys or disturbs a reasonable person of normal sensitivities, including but not limited to:

(A) Playing or using a radio, phonograph, compact disc player, tape player, television, musical instrument, sound amplifier, or other electronic or mechanical

sound-producing device in such manner or with such volume as to disturb the quiet, comfort or repose of a reasonable person of normal sensitivities.

(B) Yelling, shouting, hooting, singing or making other noise that because of its volume, frequency or shrillness unreasonably disturbs the quiet, comfort or repose of a reasonable person of normal sensitivities.

[Post-meeting note: the issue of the event being held on private property is not addressed by this ordinance. However, there is strong recognition that disturbing “the quiet, comfort, or repose of a reasonable person of normal sensitivities,” is a social value supported by Clearwater Township. Will it be necessary to add that specific language to Ordinance 16 (the Nuisance Ordinance) in order to gain police enforcement?]

George Fulkerson – came asking about rules for using his storage condo at Rapid City South as a small business facility, for working on the woodwork of firearms. He is licensed by ATF. He receives guns from local gun dealers and he fits the woodwork to the individual gun owner. There would be no ammunition and no customer traffic. It is simply a workspace for his woodwork. The commission referred him to the Master Condo Deed to review whatever deed restrictions may apply, and then go to the Clearwater Township Board with his request.

Comments from Commissioners for Matters Not on the Agenda:

There were none.

Ongoing Permanent Business:

Potential commercial zone along M-72 - We read the responses received and tallied them as *pro*, *con*, and *undecided*. The concerns raised were – environmental impact, tax considerations, property value considerations, specific location, types of businesses that might be incompatible with the topography, and threats to the watershed. The results were: 8 against, 4 in favor, and 4 undecided. Discussion ensued with many excellent questions raised by those in attendance, that should be explored before we go any further. For now, that is the end of the matter.

Minimum dwelling space requirements – The question of reducing or eliminating the minimum space requirement for dwellings has been an item of research and consideration for several months. Commissioners have sought information on the rationale for minimum dwelling space requirements, as well as on the authority of municipalities to establish such requirements. Referring to a document provided by the University of Tennessee Municipal Technical Advisory Services, “Minimum Space Regulations for Dwellings in Subdivisions,” legal opinion by Sid Hemsley, dated October 17, 1995, in response to the question “can a city ... specify a minimum space?” it appears that “the answer is generally yes, provided the minimum size is reasonable.” We also understand that there is an international code of 120 square feet per person. The minimum dwelling space requirement in the Clearwater Township Ordinance 22 – the Zoning Ordinance – is 800 square feet.

Factors that led to this topic of investigation and discussion include the shortage of affordable housing for young adults and the high costs of purchasing land and preparing it for home-building (land, well, septic). Arguments in favor of reducing or eliminating the

minimum dwelling space requirement focused primarily on how expensive it is to meet that regulation, as well as the contention that several other municipalities have done so.

Arguments against a too small or nonexistent minimum space requirement focused on the potential for overcrowding – too many people in a single small home, or too many small homes in a neighborhood – and community blight.

Township Clerk Eldridge cited the 2010 Federal Census population figures: 2,444 residents in Clearwater Township, of which 583 were 19 years of age or younger, 424 were 65 or older, and 1,433 were in the age range of 18-65. The age group of 18-65 is the target group. She stated that she didn't think the area had grown enough to warrant a change in the minimum space requirement.

There was participation in this discussion from the public. The real estate professionals indicated that there is a housing shortage in the region, and in particular a shortage in affordable housing. They stated that the TAAR (Traverse Area Association of Realtors) projects that shortage for the next five years. They opined that the small houses are essentially apartments, that there is a subdivision of such houses in the Travers RV Park, and that they are not inexpensive.

The results of the discussion were:

- 1) the matter will be part of the ongoing Master Plan consideration, with input from the public;
- 2) we will observe what happens in Kalkaska during the coming years as a result of the county's elimination of minimum dwelling space requirements;
- 3) we will take a break from this topic until we do have enough knowledge to craft an informed opinion and strategy;
- 4) this public discussion has been worthwhile and very helpful.

Waterfront setback language – The ZBA asked the Planning Commission to include specific language to the waterfront setback language to clarify that lakes are included, along with rivers and streams, as waterbodies to be protected.

For assistance in determining the appropriate language for waterfront setback definitions, the pertinent sections of ordinances from other nearby municipalities have been excerpted and constitute part of this record.

The language defining a setback is consistently the **required minimum horizontal distance from which any part of a building may be placed or erected from some given line**, such as the front lot line, the rear lot line, side lot line, or the water's edge.

The language defining the location at the shore from which an applicable setback is to be measured, is also consistent in referencing the **ordinary high water mark**.

From the Kalkaska County Zoning Ordinance (Adopted October 2001, amended Feb 1, 2017), Article 32 Definitions:

SETBACK: The **required minimum horizontal distance from which any part of a building may be placed or erected from a lot line** and which must be maintained as yard. Waterfront setback is the **minimum required distance from the water's edge to a principal building**. See definition of water's edge.

WATER’S EDGE: For purposes of this Ordinance, the water’s edge is the **ordinary high water-mark** of the water body which is that line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation. On an inland lake which has a level established by law, it means the high established level. When water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark.

From Helena Township Zoning Ordinance (12/17/2016), Section 1.03 Definitions

Setback:

The **minimum horizontal distance from an applicable lot line within which no building or structure can be placed**, except as otherwise provided in this Ordinance.

Setback, Front:

The required setback measured from the front lot line.

Setback, Rear:

The required setback measured from the rear lot line.

Setback, Side:

The required setback measured from a side lot line.

Ordinary High Water Mark:

The line between upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake that has a level established by law, it means the high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark.

From Milton Township Zoning Ordinance 2017, Chapter 2 Definitions

Setbacks: (also “yard, required”). The **minimum required distance by which any building or structure must be separated from a street right-of-way or lot line.**

Shoreline: For the purposes of this Ordinance, shoreline shall be the same as the **ordinary high water mark** elevation. The shoreline shall be designated by one of the following:

- A. For Lake Michigan, five hundred seventy-nine point eight (579.8) feet per the State of Michigan Natural Resources And Environmental Protection Act 451 of 1994, Section 324.32502, or as determined from court action, or appropriate State of Michigan action.

B. For Elk Lake, Skegemog Lake, Torch lake, Elk River and Torch River, five hundred ninety point eight (590.8) feet per the Elk Rapids Dam Gauge.

C. For other inland waters, the line, as determined by the Zoning Administrator, between upland and bottomland, which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation.

Shoreline Protection Strip: A strip of primarily natural vegetation extending inland at least twenty-five (25) feet from the shoreline of any lake, river, or stream abutting or traversing the property for the purpose of filtering runoff, providing shade and wildlife cover and bank stabilization.

D. Yards, Required: (also “setback”). The minimum required distance by which any building or structure must be separated from a street right-of-way or lot line.

From Traverse City Zoning Code 2015, Chapter 1320

Setback means the **distance required between a lot line and a building wall.**
Setback, front. Front setback means the minimum required distance, extending the full lot width, between the principal building and the front lot line.

Setback, rear. Rear setback means the minimum required distance, extending the full lot width, between the principal and accessory buildings and the lot line opposite the front line.

Setback, side. Side setback means the minimum required distance, extending from the front setback to the rear setback, between the principal and accessory building and the side lot line

From Clearwater Township Ordinance 22 (Zoning Ordinance), Article V Definitions

SETBACK - lines established parallel to a property line along a highway right-of-way or water edge for the purpose of defining limits within which no building or structure or any part thereof shall be erected.

WATER'S EDGE - for the purpose of this Ordinance, the water's edge is the **ordinary high water mark** of the water body which is that line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland is apparent in the soil itself, the configuration of the surface of the soil and the vegetation. On an inland lake which has a level established by law, it means the high established level. When water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark.

WATERFRONT LOT - a lot with at least one side abutting a pond, lake, stream, river or other watercourse and on which any principal structure is usually placed in such a manner as to orient towards the water. Separate lot width and setback

provisions are provided in this Ordinance in addition to other lot regulations for waterfront lots.

There was great discussion concerning the difference between water level fluctuation, ice erosion events, and the legally defined term “ordinary high water mark.” Following discussion regarding Section 9.02, the motion was made to add the word “lakes” to the setback requirements.

MOTION by Backers, second by Fields, that Section 9.02 Waterfront Setbacks shall read: Structural setbacks from rivers, streams, and lakes shall be 50 feet from the ordinary high water mark. Motion carried.

[Post-meeting note: Zoning Ordinance 22, Section 9.02 Waterfront Setbacks already includes the word “lakes” in it. The full request from the ZBA (document attached as Att A) pertained to Sections 4.03 and 9.02, with additional considerations. This remains to be considered by the Planning Commission.]

Definition of structure – Eldridge read a proposed definition of *structure*: “anything constructed or erected, **the use of which requires a location on or beneath the ground, or attachment to something on or beneath the ground**, but not fences or well-heads.”

Commissioner Backers raised the question of whether that meant a swing set erected in the backyard would be a structure. The commissioners generally thought that permanence should be a factor in the definition of *structure*.

For assistance in considering the appropriate language for our definition of the term *structure*, the pertinent sections of ordinances from other nearby municipalities have been excerpted and constitute part of this record. The definitions consistently pointed to the use of structures as requiring direct or indirect attachment to the ground (see highlighted language in each).

From the Kankaska County Zoning Ordinance (Adopted October 2001, amended Feb 1, 2017), Article 32 Definitions:

STRUCTURE: Anything constructed, assembled or erected, **the use of which requires location on the ground or attachment to something having location on or in the ground** and built up or composed of parts joined together in some definite manner; this includes but is not limited to any construction such as dwellings, garages, principal and accessory buildings, mobile homes, signs and sign boards, towers, poles, antennas, satellite dishes, independently supported decks, landfill, sea walls, weirs, jetties, stand pipes or other like objects, but not including fences or anything lawfully in a public right-of-way including but not limited to utility poles, sewage pumping stations, utility manholes, fire hydrants, electric transformers, telephone boxes, and related public facilities and utilities defined as essential services.

From Helena Township Zoning Ordinance (12/17/2016), Section 1.03 Definitions

Structure:

Anything constructed or erected, **the use of which requires location on or beneath the ground or attachment to something on or beneath the ground.**

Among other things, structures shall include buildings, driveways, walls, fences, roads, and towers.

Structures shall not include roads or driveways that are constructed for agricultural or logging purposes.

From Milton Township Zoning Ordinance 2017, Chapter 2 Definitions

Structure: Anything constructed or erected, **the use of which requires location on the ground or attachment to something having location on the ground.**

From Traverse City Zoning Code, Chapter 1320

Structure means anything constructed or erected, **the use of which requires a more or less permanent location on the ground or an attachment to something having a permanent location on the ground**, including, but not limited to, freestanding signs, billboards, back stops for tennis courts and pergolas.

From Clearwater Township Ordinance 22 (Zoning Ordinance), Article V Definitions

STRUCTURE - any production or piece of material artificially built up or composed of parts joined together in some definite manner; any construction, including dwellings, garages, buildings, mobile homes, signs and sign boards, towers, poles, antennae, stand pipes or other like objects, but not including fences.

Attorney Essad pointed out that the listing in the Clearwater Township definition of *structure* says “including,” but fails to say “but not limited to,” and says “or other like objects,” which is somewhat vague language. She also said that the township may add the concept of *permanence* to the definition, if it chooses to. She indicated that some townships do exclude at-grade concrete, driveways, patios, pavers and the like from their definition of *structure*, while others do not.

Fields stated her recollection that the judge in the recent case had said that if the township intended to exclude such things as driveways and at-grade patios from the definition of structure, the township would have to say so.

Parzych expressed concern that a listing of the things to be exempted could grow to be pages long. Further discussion found that listing all the things that **are** structures would be much longer than listing the few things that would be exempted from that definition. Attorney Essad affirmed that listing the items that are exempted from the definition has been done by many other townships without making their definitions pages long.

There was discussion and clarification of the meaning of a “permissive” ordinance, such as a zoning ordinance. Anything that is not expressly permitted by the ordinance is prohibited. Thus, only the items specifically exempted from the definition of a structure can escape the regulation of structures.

The concept of permanence was deemed important, so that such things as a child’s swing set would not fall under the definition of a structure. The commission also affirmed that there was no intention to exempt driveways or other at-grade items from the definition of a structure – we didn’t want the setback from the shoreline to be filled in

with concrete pads, patios, pavers, or the like. The only exception to that would be the permissibility of a pathway enabling the landowner to get to the water.

After much discussion, the motion was made to propose a new definition of *structure*, which will require the full process prescribed by law for amending the ordinance. A public hearing will have to be scheduled, with proper notice to the public. The text of the proposed amendment will have to be made available for public review prior to the public hearing.

MOTION by Eldridge, second by Parzych, that the definition of *structure* be amended to: “anything constructed or erected, the use of which requires a permanent location on or beneath the ground, or attachment to something on or beneath the ground, but not fences or well-heads.” Motion carried.

Roll call vote:

Parzych –yes

Backers – no

Von See – yes

Eldridge – yes

Fields – yes

No date has yet been set for a public hearing on this proposed change to the definition of *structure*.

Old Business:

Medical marijuana update – Nothing new in the last month or so.

Report of Township Representative:

Report from Clerk Eldridge – The street lights are up on Morrison and Plum Valley Roads. The cleanup day was a big success; cost to the township was \$10,620. Jule Moore has been appointed as alternate for the ZBA. SEEDS has been approved to work in the parks. The quote on Zimmerman Road work is \$608,000. Sandbar items: the township will pay for sheriff jet-ski rentals and is making a \$1,500 donation to the marine patrol; the township will provide trash receptacles and porta-johns. Wilhem Road bids are in at \$55,000 – paid half up front, the rest when completed. Baggs Road - also half up front. The board passed the motions recommended by the Planning Commission (Karazia family second dwelling and Torch Grove Campground expansion to 54 sites).

Supervisor Niederstadt is out of the hospital and convalescing at the Pavilions Eldridge spoke with him today; he was tired and resting, but getting better.

Report of Zoning Administrator:

Zoning Administrator Molby – distributed his report for May 2017, which report is hereby incorporated into the record by reference, and a copy of which is attached to the permanent copy of these minutes as [Att B]

New Business

There was no new business.

Closing Public Comment:

There was none.

Adjournment:

MOTION by Backers, second by Fields, to adjourn. Adjournment at 9:16 pm.

Assignments:

- Fields notify the Township Board of our actions.

Next Meeting: July 10, 2017 at 7:00 pm.

Respectfully submitted,



Tina Norris Fields
Secretary

Proposed changes to sections 4.03 and 9.02 of the Clearwater Township Zoning Ordinance #22
(New language is in italics)

4.03 LAKE, RIVER AND STREAM PROTECTION

Activities which are detrimental to the natural quality of watercourses in Clearwater Township are expressly prohibited. Such activities include, but are not limited to, pollution of water by the introduction of chemical or organic pollutants, and/or erosion of *lake, river, or stream banks*.

- A. No Land Use Permit shall be issued for construction on wetlands without PRIOR approval from the DNREQ.
- B. There shall be a natural vegetative strip, fifty (50) *feet* in depth, maintained along the water's edge of the *lake, river or stream*.
 1. The vegetative strip shall contain native trees, shrub and other vegetation and natural materials. The purpose of this strip is to stabilize *lake, river, and stream banks*, prevent erosion, absorb nutrients in water runoff from adjacent lands, provide shading (eliminate the words "for the stream") to maintain cool water temperatures and screening of adjacent man-made structures.
 2. The Zoning Administrator shall notify each applicant for a Land Use Permit of the purpose of this vegetative strip.

9.02 SPECIAL REGULATIONS

Waterfront setbacks: Structural setbacks from rivers, streams and lakes shall be 50 feet from the high water mark. *No man-made structure, above or level with the land, of any material, shall be permitted in the setback with the exception of one walkway to the water. The walkway shall be no more than 4 feet in width and preferably of a permeable material.*

Zoning Administration Monthly Report MAY 2017 Clearwater Township

4 Land Use Permits

/ Garages, Sheds 7720 HOLMES DR.

/ Residences 7225 W-72ND

Residences with Attached Garage

Pole Barns

/ Resident Additions 7360 GILBERT RD.

/ Decks, Porches, etc. 9917 PINE CIRCLE DR.

Miscellaneous, Other Buildings

9 Field Checks

2 Attorney Contacts

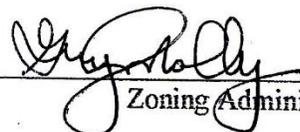
1 Planning Commission Meetings

25 Contacts with Public, Home and Land Owners FENCE LINE, SET-BACKS, PROP. SIZE
TREE PLANTING, SOIL & H2O QUES.

1 ZBA Meetings and/or Township Board Meetings DISTRICT COURT ORDER

— Training Sessions

3 Zoning Violations 5612 MADISON, 9495 WESTBROOK, 9804 TWINBROOK


Zoning Administrator