

APPROVED 7/6/16

Special Meeting of the Casco Township Planning Commission

June 8, 2016 – 6:00 PM

**Members Present:** Chairman Daniel Fleming, David Campbell, Dian Liepe, Lewis Adamson, Greg Knisley, Paul Macyauski and Judy Graff

**Absent:** None

**Staff Present:** Al Ellingsen, Zoning Administrator and Building Inspector, and Janet Chambers, Recording Secretary

**Also Present:** 7 interested citizens

1. **Call to order and review of agenda:** Chairman Fleming called the meeting to order at 6:00 PM. There were no changes to the agenda.
2. **Constitutional “Moment”:** Chairman Fleming shared a Constitutional Moment with commissioners from the final section of the Declaration of Independence and its relevance to the Planning Commission. (Attachment #1)
3. **Public comment:** None
4. **Review draft text of proposed ZO amendments for:**
  - A. **swimming pools:** Chairman Fleming said that Michigan State Law has been changed to allow for the option of a swimming pool cover instead of a fence. Discussion ensued about the swimming pool ordinance including the proposed change would be what the State of Michigan allows. Ellingsen discussed the natural barriers and pool covers with attorney Bultje. Ellingsen stated that the required cover would have to meet with the state construction code and pool owners must provide specs to the building inspector to be sure it is sufficient. The amended ordinance would have to go to a public hearing, then to the Casco Township Board for approval.

The proposed change as follows:

- D. Each pool shall be enclosed by a fence or wall with a height of at least four (4) feet, sufficient to make the body of water inaccessible to small children. The enclosure, including gates therein, must be not less than four (4) feet above the underlying ground. All gates must be self-latching, and latches shall be placed four (4) feet above the ground or otherwise made inaccessible from the outside to small children. See Section 3.32 for other fence requirements. ***A natural barrier or other protective device may be approved by the Zoning Administrator as an alternative if the degree of protection afforded is at***

***least equal to the protection offered by the fence or wall, and if the alternative complies with the state building code.***

Chairman Fleming entertained a motion to amend SECTION 3.16 D as above. A motion was made by Campbell, supported by Macyauski. All in favor. MSC.

- B. Nonconforming lots, uses, structures:** Ellingsen stated that there is no path for a person with a nonconforming use to expand. The proposed change in the Ordinance would allow a nonconforming use to be expanded by 50%. There is an existing nonconforming business that has interest in expanding. An expansion would have to go through the ZBA and then the Planning Commission for site plan review. Discussion ensued about the issue. If a person expanded, then wanted to expand again in the future, they would have to go back through the process again to get a 2<sup>nd</sup> expansion. Questions arose about the 50% limit on expansion. What would be the plus & minus of going more or less than 50%. Ellingsen will ask Attorney Bultje if there is a reason for the 50% expansion cap.

Macyauski suggested the PC move ahead and then amend the text after more consideration of the 50% expansion limit.

A motion was made to move forward with an amendment to Section 3.28 Nonconforming Lots, Uses or Structures by Macyauski, supported by Adamson. All in favor. MSC.

Proposed Ordinance change as follows with consideration of changing text further.

## **SECTION 3.28 NONCONFORMING LOTS, USES OR STRUCTURES**

A. Intent.

1. Within the zoning districts established by this Ordinance, or any subsequent amendments thereto, there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this Ordinance was passed or amended but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed but not to encourage their expansion or continuation ***except in compliance with this Section.***
2. Nonconforming uses are declared by this Ordinance to be incompatible with permitted uses in the zoning districts involved. A nonconforming use of land or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this Ordinance ~~by attachment on a building or~~

~~premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the zoning district involved, or an amendment to this Ordinance except in compliance with this Section.~~

3. To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

B. Nonconforming Lots of Record.

1. A single lot of record is not contiguous with another lot or lots under the same ownership. Where a single lot of record *in a platted subdivision* (in existence at the time of the adoption or amendment of this Ordinance) does not meet the minimum requirements for lot width, *lot* depth or lot area, that single platted lot of record may be used for any purposes permitted by the zoning district in which the lot is located, provided that:
  - a. the minimum lot width shall be fifty (50) feet;
  - b. the minimum lot depth shall be one hundred (100) feet;
  - c. the maximum lot coverage for all buildings shall be twenty-five (25) percent, and;
  - d. the setbacks for the main building shall be a minimum of:
    - (1) Twenty-five (25) feet for the front setback.
    - (2) Twenty (20) feet for the rear setback.
    - (3) Ten (10) feet for each side setback.
2. Where the setbacks cannot be met on the nonconforming lot, the owner may request a variance from the Zoning Board of Appeals under Chapter 20.
3. Contiguous Nonconforming Lots in Common Ownership

- a. For any two (2) or more nonconforming lots of record or combination of lots and portions of lots of record, in existence at the time of the passage of this Ordinance, or an amendment thereto, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance if they meet the following:
  - (1) Are in the same or **substantially the same condition similar ownership.**
  - (2) Are adjacent to each other or have continuous frontage.
  - (3) Individually do not meet the lot width or lot area requirements of this Ordinance.
  
- b. In the case where several contiguous nonconforming lots must be combined the resultant buildable lot or lots shall provide a:
  - (1) Minimum lot width of sixty (60) feet;
  - (2) Minimum lot depth of one hundred (100) feet;
  - (3) Maximum lot coverage for all buildings ~~shall be of~~ twenty-five (25) percent;
  - (4) Front setback of twenty-five (25) feet ~~for the front setback;~~
  - (5) Rear setback of twenty (20) feet; **and**
  - (6) Side setback of ten (10) feet.
  
- c. No portion of such parcel shall be used or divided in a manner which diminishes compliance with lot, width ~~and or lot~~ area requirements.

C. Nonconforming Uses - Change or Discontinuance.

1. Except as noted in subsection 2 below, the nonconforming use of a building or structure or of any land or premises shall not be:
  - a. Re-established after it has been changed to a conforming use; **or**
  - b. Re-established after **being** abandoned or discontinued for a continuous period of twelve (12) consecutive months, or for eighteen (18) months within any three (3) year period. A nonconforming use shall be determined to be abandoned or discontinued if one (1) or more of the

following conditions exists, and are deemed to constitute an intent on the part of the property owner to abandon the nonconforming use:

- (1) Utilities, such as water, sanitary sewer, gas and electricity to the property, have been disconnected.
- (2) The property, buildings, and grounds, have fallen into disrepair.
- (3) Signs or other indications of the existence of the nonconforming use have been removed.
- (4) Equipment or fixtures which are necessary for the operation of the nonconforming use have been removed; **or**
- (5) Other actions have ~~occurred~~ **been taken** which, in the opinion of the Zoning Administrator constitute an intention of the part of the property owner ~~or lessee~~ to abandon the nonconforming use.

2. The Zoning Administrator may permit a nonconforming use to be converted to a more conforming use which is less intensive or objectionable. In considering permission, the Zoning Administrator shall use the following standards in making the decision:

- a. The building or premises may be changed to a permitted use for the zoning district in which the existing nonconforming use is located. The new use must meet all Ordinance requirements **for that use**.
- b. The use of the building or premises may be changed to another nonresidential use which would be permitted by right in a more ~~restricted~~ **restrictive** zoning district than the one in which it is located.
- c. ~~The use will be performed entirely within an enclosed building.~~

3. The Zoning Administrator must document the rationale for permitting the conversion of a nonconforming use and place that documentation in the records of the Township. This documentation shall ~~also~~ be provided to the Planning Commission.

D. Nonconforming **Buildings or** Structures.

1. Where a lawful **building or** structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, ~~its~~ location on the lot, or other requirements concerning **the building or the**

structure, the **building or** structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a. No ~~such~~ nonconforming **building or** structure may be enlarged or altered in a way which increases its nonconformity, but ~~any structure or portion thereof it~~ may be altered to decrease its nonconformity.
- b. Should ~~such a~~ nonconforming **building or** ~~nonconforming portion of~~ structure be destroyed by any means, it ~~can~~ **may** only be rebuilt as permitted in Section 3.28.E.2.
- c. Should ~~such a nonconforming~~ structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zoning district in which it is located ~~after it is moved~~.

E. Repairs and Maintenance.

1. Except as provided by ~~Section 3.28.D.1.b, and~~ Section 3.28.E.2, all repairs and maintenance work required to keep a nonconforming building or structure in sound condition may be made, but it shall not be structurally altered to permit the use of such building or structure beyond its natural life, except for repairs necessary to maintain public safety.
2. ~~Other than dwellings, nonconforming~~ **Nonconforming** buildings or structures damaged by fire, wind, explosion, act of God, or public enemy may be ~~rebuilt or~~ restored **or repaired** if the cost thereof does not exceed fifty (50) percent of the **true** cash value of the nonconforming building or structure prior to its damage or destruction. If the cost of restoration or repair would exceed fifty (50) percent of the true cash value of the nonconforming building or structure prior to its damage or destruction, a substantial improvement or rebuilding **the restoration or repair** shall be permitted only if it complies with the requirements of this Ordinance.
3. **Residential** nonconforming dwellings damaged by fire, wind, explosion, act of God, or public enemy ~~may be rebuilt or~~ restored **or repaired** provided that such reconstruction takes place within the confines of the original nonconforming building height and footprint.
4. If a nonconforming **building or** structure ~~or portion of a structure~~ containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, ~~or rebuilt~~ repaired except in conformity with ~~the requirements of~~ this Ordinance.

F. Any **buildings**, structures or uses which fail to conform to the ~~previous Casco Township Zoning—predecessor of this~~ Ordinance, were not constructed or used legally, were not permissible nonconforming ~~uses—buildings~~ or structures, **or uses** thereunder, or which violated ~~that Zoning Ordinance, the predecessor of this Ordinance~~ shall not be considered nonconforming ~~uses buildings~~ or structures under this Ordinance. The **buildings**, structures or uses shall be considered illegal and subject to the enforcement provisions of this Ordinance.

G. ***Structures, buildings, or uses nonconforming because of height, area, or parking and loading space only may be extended, enlarged, altered, remodeled, or modernized provided there is compliance with all height, area, and parking and loading sections with respect to the extension, enlargement, alteration, remodeling, or modernization, and the Zoning Administrator determines that the extension, enlargement, alteration, remodeling, or modernization will not substantially extend the life of any nonconforming building or structure. Any use of a building or structure which is nonconforming because of parking and loading sections and which is thereafter made conforming or less nonconforming by the addition of parking or loading space shall not thereafter be permitted to use such additionally acquired parking or loading space to meet requirements for any extension, enlargement, alteration, remodeling, modernization, or change of use which requires greater areas for parking or loading space.***

H. ***No nonconforming use of any building or structure or of any lot or parcel which is nonconforming for reasons other than height, area, or parking and loading space shall be extended or enlarged unless all extensions or enlargements do not exceed fifty (50) percent of the area of the original nonconforming use and unless such extension or enlargement is authorized by the Zoning Board of Appeals as a matter for decision pursuant to Section 20 of the Zoning Act (MCL 125.290). In considering such authorization, the Zoning Board of Appeals shall consider the following standards.***

1. ***Whether the extension or enlargement will substantially extend the probable duration of the nonconforming use; and***
2. ***Whether the extension or enlargement will interfere with the use of other properties in the surrounding neighborhood for the uses for which they have been zoned or with the use of such other properties in compliance with this Ordinance.***

C. **fences:** The State has changed the height of fences requiring a building permit from 6' to 7'. Ellingsen suggested that Casco Township change the height of fences requiring a building permit be changed from 6' to 7' to keep in line with the State. The purpose of obtaining a building permit for a fence is to be sure it is properly built to withstand wind issues. Further discussion was about a previous request for an 8 ft. fence constructed for privacy and deer issues. Commissioner's questioned why not allow for an 8 ft. fence. After much consideration, commissioners decided to make changes to Section 3.32 Fences B and Section 3.32 Fences E. The rest of the Fences Ordinance will remain the same. A motion

was made by Campbell to make the following changes to Section 3.32 B & 3.32 E. supported by Adamson, Fleming, Campbell, Liepe, Adamson, Kinsley, and Graff in favor. Macyauski opposed. MSC.

#### Section 3.32 Fences

- B Unless provided for elsewhere in this Ordinance, a fence may not exceed a height of three (3) feet within any required front yard setback area, or a height of ~~six (6)~~ **seven (7)** feet in any other area. For waterfront lots, a fence may not exceed a height of three (3) feet within any front or rear yard setback area, or a height of ~~six (6)~~ **seven (7)** feet in any other area.
- E In the case of a double frontage (through) lot in any Residential District, a fence up to ~~six (6)~~ **seven (7)** feet in height may be erected in the rear yard, as determined by the Zoning Administrator, but shall not block clear vision for area driveways or roadways.

Ellingsen will set up a public meeting at the regular July 6<sup>th</sup> meeting at 7:00 pm.

- 5. **Discussion of allowing restaurants in the Ag district.** Mr. Cline on 111<sup>th</sup> Street would like to put a restaurant in the Ag district. It would be a stand-alone restaurant and not an ancillary use. He had planned to have an attorney represent him at the meeting, but the attorney could not make it.

Commissioners commented that the ag district would allow pigs, etc. Why not a restaurant? Questions to consider are; Will it change the character of the area? Will it affect the immediate area? Would the master plan have to be amended? Discussion continued including why a Farm Market or Winery can serve food in Ag district as an ancillary use and restaurants are not allowed. It is the responsibility to consider allowing a restaurant in the Ag district as long as it is in the best interest of the community and in the spirit of the ordinance. Building codes will have a big impact.

Campbell asked that Ellingsen put a list of items for consideration. Campbell stated that it could be cost prohibitive, but a public hearing should be set up and see where it goes. Graff said the Purpose of AG district in 5.01 should be carefully considered.

Macyauski stated a Site Plan review will be needed to make sure it is not intrusive and applicable to the area. Road issues and parking issues, etc. will have to be considered.

#### 6 **Discussion of new South Haven rental ordinance**

Campbell provided Commissioners with a copy of June 5, 2013, South Haven Tribune article regarding South Have Township's short term rentals. (Attachment #2)

Stand-alone ordinance would be done by the board, or the Board may ask that the Planning Commission put something together. It could go to court no matter how it is handled. The City of South Haven is already having issues with their new Short Term Rental Ordinance. People are buying or building just for the purpose of short term rentals.



Macyauski inquired about having Bultje coming up with text for the Ordinance. Ellingsen said that Bultje would need to know how Casco wants to handle short term rentals first. Items to consider will be compatibility between rentals and private residence, an agent within a certain distance to handle complaints, number of renters, parking, garbage, use of facilities (beach). Commissioners felt they should go through the City of South Haven Short Term Rental Ordinance #1026 line by line as a starting point for coming up with the Ordinance for Casco.

Commissioners all agreed that short term rentals is something that must be addressed.

Ellingsen asked that Graff speak to the Board to see what they would like the Planning Commission to do about short term rentals. The Annual meeting will be at 6:00 PM, followed by the Board meeting at 7:00 PM on June 20, 2016.

- 7 **Public Comment:** Larry Scott stated that short term rentals is increasing and is impacting quality of life and infrastructure. Neil Zoellner of Glen Shores stated traffic is speeding, bon fires not always put out, no police to call about this. He stated that Casco needs to determine if they want short term rentals or permanent homeowners. If the township wants short term rentals, then it is time for him to leave. He added that 70% of South Haven is rentals with nobody there I the winter. It is a huge problem.

Steve Malinowski stated that parking, fire hazard, the association is pretty meager, he is relying on the township to help.

Anthony Toweson, 1188 hickory Dr., lives in Kalamazoo, bought a rat infested dive and fixed it up. Everyone was happy. Owners need to be selective and check up on renters. Casco should take input from property owners input for an ordinance. The beach is small right now. Renters are not bad people, but homeowners are more invested in the community. A home had 20 people over labor day weekend.

Bill Garrity, a permanent Glen Shores year around resident; attended meeting to listen. He stated there are clearly good and different viewpoints on both sides of the issue. The trend is in increasing rentals; he has not experienced a lot of major concerns, but there have been issues like Zoellner talked about. Giving the visibility and strong opinions, where is this heading, a rental community or low density like the Ordinance calls for? Where is the focus? What are you trying to accomplish? Giving the apparent interest and maybe it is a matter of more guidance. He would like folks they elect and depend on, to make it clear what direction they are going.

Martin Super said rentals have always been here. He said Casco has to make an Ordinance and must take action, we are not in a proactive position, we are already in a reactive

position. He said he has not had a lot of problems with renters. He has kicked out about 35 people in the last 4 years. It is the responsibility of the owners to handle nuisances.

Macyauski asked how the township can enforce complaints. There is nothing the police can do. It is not criminal, but civil.

Campbell said situations that will have to be addressed such as cost for enforcement. A business model should be built to cover the cost.

Discussion continued about registering and how this could be enforced. Super stated that ¾ of rentals are available online and would not be difficult to find out who is renting.

Kinsley attended the South Haven meetings when they discussed violations and how to enforce rules. He said there has to be a phone number and someone close by available to answer complaints. There was a 3 strike deal where an owner would not be able to rent his property for a year after 3 complaints.

- 8. Closing comments and adjournment:** Chairman Fleming stated that Judy will talk with the board to see if they want the Planning Commission to handle a short term rental ordinance.

A motion by Kinsley, supported by Campbell to adjourn. All in favor. MSC. Meeting adjourned at 8:30 PM.

Next meeting will be Wednesday, July 6, 2016 at 7:00.

Minutes prepared by Janet Chambers, Recording Secretary

Attachment #1: Constitutional Moment

Attachment #2: Article Sunday, June 5, 2016 South Haven Tribune, Re: Short term rental

6-8-201

For our constitution moment this evening, I would like to read the final section of the Declaration of Independence. As was Inentioned before, the first part of the document gives the reasons for separation from Great Britain, This last part declares the separation.

“Wehold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights..”

That Creator is going to be referenced two more times in this section.

Why is this ilnportant?

'Ne need to know what principles our constitution is built upon if we are going to support and uphold it.

"We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Narne, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor."

*Narrative of the miseries of New England, by reason of an Arbitrary Government Erected there Under Sir Edmund Andros" (1688)*

..Some regulations are unreasonable on their face, and it does not matter how they are applied An example of' facial invalidity could involve a zoning regulation that requires all buildings to be the same height, regardless of their use Clearly, such a regulation would be arbitrary, irrational and without any real relationship to public health, safety or welfare..

- 'The good news for townships is that zoning ordinances are presumed to be reasonable and constitutional. .the Michigan Supreme Court established and reaffirmed that the burden is on the person challenging a zoning ordinance to demonstrate that it is capricious, and unreasonable. ..(The Township Guide to Planning and Zoning, Chapter 4, pg. 36, Copyright 1998; Revised 1 2)

# Township studies vacation rental rules

BY ANDREW LERSTEN  
FOR THE TRIBUNE

Now that South Haven has adopted short-term rental ordinance, officials in neighboring South Haven Township think it's time to consider rental rules too.

The township planning Commission has been reviewing rental ordinances from other area townships and cities, and continued its discussion last week.

Commissioner Mark Odland said because the city now has regulations on the popular short-term vacation rentals, it's possible the township could see a wave of short-term rentals ahead.

"Should we be thinking about this?" Odland asked. "(Developers) might come out here and buy up property specifically for short-term rentals."

Commissioner Lowell Tippman said he would be in favor of requiring short-term rental proper-

See RUII ES, A5

## TTERS

SUNDAY, JUNE 5, 2016 — 5A

South Haven Tribune

The organization then will host a series of candidate forums in October consisting of local and state candidates seeking office in the November election.

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"I think it's healthy we're having this discussion," Odland said.

In other matters, the commission voted to recommend Township Board approval of a site plan for new seven mini-storage buildings on the south side of Phoenix Road, east of 73rd Street.

Developer Roger Marcy, Saugatuck, said there would be a total of 62,000 square feet of mini-storage units, possibly with up to 400 units.

They would be rented monthly, he said. But he doesn't know the specific number of units yet, because it will depend on how much interest he'll find for larger units for boats or cars.

The Township Board will consider the site plan Wednesday night.

The commission also voted to recommend township approval for an outdoor summer market in the Township Hall parking lot. It would be held on the second Saturday

## RULES

Continued from A1  
ties to be registered, as the city is now requiring.

The township currently has no regulations specific to short-term rentals, noted Zoning Administrator Patrick Hudson.

The discussion will continue next month.