

**OTSEGO COUNTY
ZONING BOARD OF APPEALS**

**AGENDA
April 30, 2019
6:00 PM**

MEETING WILL BE IN THE PLANNING AND ZONING MEETING ROOM LOCATED AT 1322 HAYES RD

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES: From September 25, 2018 meeting

CITIZEN COMMENT REGARDING ITEMS NOT ON THE AGENDA

PUBLIC HEARINGS

NEW BUSINESS:

1. *Interpretation:* Multiple Family Dwellings
2. ZBA By-Laws -Amend
3. Elections
4. Expiring Terms:
 - a. Colosimo – 2018
 - b. Bono – 2019
 - c. McCarthy – 2019
5. New Member (*Alternate*) – Recommendation

OLD BUSINESS

ADJOURNMENT

Otsego County Zoning Board of Appeals

Proposed Minutes for September 25, 2018

Vice-Chairperson Hoffman called the meeting to order stating the meeting would be relinquished to the Chairperson should he show up.

Call to Order: 6:00 pm by Vice-Chairperson Hoffman

Roll Call:

Present: Vice-Chairperson Hoffman, Secretary McCarthy, Ms. Bono, Mr. Brown, Mr. Glasser, Mr. Switalski (*Alternate*)

Absent: Chairperson Sagasser, Mr. Colosimo

Staff Present: Mr. Mouch, Mr. Churches, Ms. Boyak-Wohlfeil

Public Present: Francine & David Musinski, Jack Udebrock, Jay Weller, Randy Stults

Approval of Minutes from November 28, 2017:

Motion made to approve minutes as presented by Mr. Brown; Seconded by Ms. Bono.

Motion approved unanimously.

Citizen Comment Regarding Items not on the Agenda: None

Public Hearing:

1. *David & Francine Musinski, property owners, request a variance for property located in Otsego Lake Township:*

*11927 Fantasy Dr
Frederic, MI 49733
091-210-000-625-01*

PZBA18-003 - The purpose of the variance is to allow a reduction in the side setback for a structure built.

The property is currently zoned RR/Recreation Residential.

Vice-Chairperson Hoffman stated the case *PZBA18-003* before the Zoning Board of Appeals, requested the owners present their case and opened the public hearing.

Public Hearing opened: 6:04pm

Francine Musinski presented the ZBA members with additional information from Enchanted Forest Property Owners Association and the neighboring property owner to the south of them, Rosemary Vitale. Mrs. Musinski gave some personal background information while the members reviewed the information.

David Musinski stated they had contacted Mrs. Vitale about purchasing the lot south of them, (she owned three lots to the south) but she did not want to sell. He asked about purchasing a piece of the lot but again was turned down. He then asked if she would object to a variance placed on the property and she stated she did not have a problem with that.

Ms. Bono questioned the reason why the neighbor did not want to sell.

Mr. Musinski stated she had wanted to retain all three parcels of property to pass on to her grandchildren.

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Mrs. Musinski stated they had included pictures of the prow style house they had built in the handout. They had gotten two quotes to find out the cost of moving the house five feet (5') and had gotten a cost of \$30,000. In addition, the sunroom would have to be detached, the garage would have to be detached and the well would have to be relocated. A new foundation would need to be put in place and the land would need to be excavated for trucks to maneuver the property. They figured with all the work involved, the cost would be about \$80,000. She stated they did not do this on purpose, this was a mistake; they were not gaining anything by it and apologized for the error.

Ms. Bono questioned the property markers used to measure the layout.

Mr. Musinski stated he had located the metal stake out front; there was a wooden stake at the back of the property, uphill and in a wooded area and that was what he used to measure from the front stake. When the Health Department inspector was out checking the septic location, he stated it looked like it was pretty close to the property line. Mr. Musinski stated at that point, he put a halt to everything. They got a metal detector and located the metal stake at the back of the property and then realized he was not 20' off the property line but only 6.8'.

Ms. Bono questioned why a survey was not done before they built.

Mr. Musinski stated he thought he had located the stakes but in hindsight, that would have saved him all this trouble. He used the wrong stake, it was his error, it had not been intentional.

Ms. Bono questioned if the builder had concerns about the property line.

Mr. Musinski stated he was the builder and as soon as he realized the error, he had all work on the house stopped.

Mr. Brown questioned why the house was built so close to property line to begin with when they had a large piece of property to utilize.

Mrs. Musinski stated the house was placed next to the driveway and past that the property went uphill; they would have had to excavate to move it further.

Ms. Bono stated she had gone out to the site and had wondered the same as Mr. Brown at the placement of the house; she thought it could have been moved over more to begin with but that was a moot issue.

Mr. Musinski stated the wooden stake at the back of the property was approximately 50' from where the correct stake had been found. If he had measured from the front stake to the correct one, the house would have been about 20' from the property line.

Mrs. Musinski stated she understood financial hardship is not taken into consideration but they had already invested \$100,000 into the house and with the cost of moving it and the cost of completion, it would be over \$250,000. There is no way they could recoup that cost. She stated it was their mistake but they did not feel it was to anyone's benefit to deny the variance. The house is half built, Guthrie Lakes is not seeing a big boom in houses, Otsego County would lose good taxpayers, their taxes and association dues were always paid on time and logically she didn't see who would win. Guthrie Lakes Association had approved it, the neighboring property owner had agreed to the variance and Otsego Lake Township Planning Commission had approved it.

Jack Udebrock, Otsego Lake Township Planning Commissioner, stated they had deliberated the case and thought it could be looked at in two ways in order to make a recommendation; you could take the hard line or you could look at the overall picture. They choose to look at the overall picture. Even though it was the property owners' mistake, his interpretation was you had to allow for mistakes, that was what the board was all about. If you take the hard line, then its clear cut, you don't need the board. He looked at in a localized manner; this revolved around the applicant and the person with the lot next door. They were out in the woods, on the southern boundary of the county with the government range behind them so there

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was no impact on the rest of the community. He did not think they were establishing precedent; each case needed to be looked at on its own grounds and as far as he was concerned, the punishment did not fit the mistake. The Commission deliberated and tried to find a way to recognize the minimum amount of property to resolve the problem.

Ms. Bono questioned if any members had spoken with the neighbor.

Mr. Udebrock stated they had not but they had requested the letter from the neighbor stating their approval and they were the only ones impacted by this.

Mr. Brown thanked him for his input and stated based on Otsego Lake Township's recommendation, if the local community was alright with it, he thought it should be supported.

Motion made by Mr. Brown to approve the case PZBA18-003 in support of Otsego Lake Township's recommendation; Seconded by Mr. McCarthy.

Vice-Chairperson Hoffman ruled the motion out of order until after closing the public hearing. He requested a statement from Mr. Mouch on the case before them.

Mr. Mouch stated he could only enforce the Zoning Ordinance as written so he would have to deny the request and enforce the setback for the district.

Ms. Bono questioned if a survey was required before a building was constructed.

Mr. Mouch stated there is nothing in the Zoning Ordinance that requires that. At one point in time, a staking inspection was required but because survey markers can get moved over the years by excavation and such, Land Use no longer required that. Measurements would be taken from where the property owner thought their markers were.

Vice-Chairperson Hoffman questioned at what point a structure was measured from the property line.

Mr. Mouch stated it was measured to the eaves of the structure.

Vice-Chairperson Hoffman asked if Mr. Musinski had any other further comments.

Mr. Musinski stated he had made a mistake, he admitted his mistake, he didn't try to hide the mistake, he had notified the County of what had happened and followed the procedure as he had been told and ended up here.

With no further comment, Vice-Chairperson Hoffman closed the public hearing.

Public Hearing closed: 6:35pm

Vice-Chairperson Hoffman stated before they discuss Mr. Brown's motion the Finding of Fact needed to be reviewed for agreement. He stated number five of the Finding of Fact read a variance for 3.2' and questioned if that was measured to the foundation.

Mr. Musinski stated it was. The measurement on the notarized letter from the neighbor was changed to 5.5' to include the overhang.

Mr. Brown stated the application stated 3.2' and requested clarification of the measurement.

Mr. Musinski stated the measurement from the property line to the foundation was 6.8' but with the addition of the overhang the variance request changed because it encroached closer to the property line.

Ms. Bono stated if number five of the Finding of Fact was changed then number four also needed to be changed to coincide.

Mr. Mouch questioned if the 5.5' was the variance requested.

Mr. Musinski stated yes.

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Mr. Glasser read Section 26.6.5 of the Ordinance stating the variance requested must be the minimum necessary.

Mr. Mouch stated the absolute number was unknown and suggested getting an exact measurement from the surveyor.

Mr. Musinski stated this was brought up at the Otsego Lake Township meeting so he had called the surveyor to verify the measurement from the property line to the foundation. The surveyor stated the overhang, drip edge and shingles needed to be included as well but were not. The overhang was exactly one foot with a ¾" drip edge along with ⅝" for shingles; they felt the 5.5' variance would cover everything and was probably within an inch.

After discussion, it was determined the minimum variance requested would be 4.32' from property line to the eaves including the overhang, the drip edge and the shingles. (SEE ATTACHMENT 1)

It was also agreed the notarized letter stating a requested variance of 5.5' would still cover a variance request of 4.32'.

Finding of Fact numbers four and five were revised to include the amendment to the variance.

Additional items received were added to the Finding of Fact and Exhibit List as items presented at the meeting.

Vice-Chairperson Hoffman read aloud Section 26.6 Dimensional or Non-Use Variance requesting a roll call vote for each item.

Motion made by Mr. Glasser that the requested variance will not be detrimental to the public welfare or otherwise injurious to other properties in the same zoning district; Seconded by Mr. McCarthy.

Section 26.6.1

Roll call vote:

Mr. Hoffman: yes

Mr. McCarthy: yes

Mr. Glasser: yes

Mr. Brown: yes

Ms. Bono: yes

5 yes votes; Motion passed.

Motion made by Ms. Bono that the requested variance is necessary for the applicant to receive a right available to other properties in the same zoning district; Seconded by Mr. McCarthy.

Section 26.6.2

Roll call vote:

Ms. Bono: no

Mr. Brown: yes

Mr. Glasser: no

Mr. McCarthy: no

Mr. Hoffman: no

1 yes – 4 no votes; Motion failed.

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Motion made by Mr. McCarthy that special physical conditions or unique circumstances exist with this property and do not generally apply to other properties in the same zoning district; Seconded by Ms. Bono.

Section 26.6.3

Roll call vote:

Mr. Hoffman: no
Mr. McCarthy: no
Mr. Glasser: no
Mr. Brown: yes
Ms. Bono: no

1 yes – 4 no votes; Motion failed.

Motion made by Ms. Bono that the special conditions or circumstances are not the result of actions by the applicant or predecessor in title; Seconded by Mr. McCarthy.

Section 26.6.4

Roll call vote:

Mr. McCarthy: yes
Mr. Glasser: no
Mr. Brown: yes
Ms. Bono: no
Mr. Hoffman: no

2 yes – 3 no votes; Motion failed.

Motion made by Mr. Glasser that the requested variance is the minimum variance necessary that will make possible the reasonable use of the land; Seconded by Mr. McCarthy

Section 26.6.5

Roll call vote:

Ms. Bono: yes
Mr. Brown: yes
Mr. Glasser: yes
Mr. McCarthy: yes
Mr. Hoffman: yes

5 yes votes; Motion passed.

Vice-Chairperson Hoffman requested an overall motion for the approval of the variance.

Motion made by Mr. Glasser for approval of variance PZBA18-003 based on clear and correct Finding of Fact and review of Sections 26.6.1 – 26.6.5; Seconded by Mr. McCarthy. (SEE ATTACHMENT 2 &3)

Roll call vote:

Mr. Hoffman: no
Mr. McCarthy: yes
Mr. Glasser: no
Mr. Brown: no
Ms. Bono: no

*1 yes – 4 no votes; Motion failed.
Variance denied.*

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2. *Steven Sulkey/Otsego Lake Rentals, property owner, requests a variance for property located in Bagley Township:*

*Buck Rd
Gaylord, MI 49735
011-700-003-004-01 / 011-700-003-006-01*

PZBA18-004 - The purpose of the variance is to allow a larger accessory building. The property is currently zoned RR/Recreation Residential.

Vice-Chairperson Hoffman stated the case *PZBA18-04* before the Zoning Board of Appeals, and questioned if the applicant was present. There being no one in attendance to present the case, Vice-Chairperson stated they would discuss the case with the information before them. He asked Mr. Mouch to comment.

Mr. Mouch stated based on the Zoning Ordinance and the scope of his authority, the case would have to be denied because the maximum square footage allowed in a RR Zoning District was 1200 square feet.

Ms. Bono questioned the size of the structure if the two lots were combined.

Mr. Mouch stated it would still only be 1200 square feet. He also mentioned one of the lots was under a land contract. He also stated the package was not complete; a lot line adjustment with a survey had not been applied for.

Ms. Bono questioned postponing the case.

Mr. Glasser stated they couldn't make a motion to postpone the case when the meeting date was uncertain.

Vice-Chairperson Hoffman stated they should make a decision based on the information before them.

Mr. Glasser suggested setting a meeting date for the next thirty days to postpone the case and allow the applicant to gather the additional information and appear before them.

Motion made by Mr. Glasser to postpone to a date certain October 30, 2018 6:00 pm to review case PZBA18-004; Seconded by Mr. McCarthy.

Ms. Bono questioned what would happen if the additional information was not received.

Mr. Glasser stated Land Use would notify them the packet was incomplete and the meeting would be canceled.

Vice-Chairperson Hoffman requested a roll call vote.

Roll call vote:

Mr. Hoffman: yes

Mr. McCarthy: yes

Mr. Glasser: yes

Mr. Brown: yes

Ms. Bono: yes

Applicant will be notified of new meeting date.

New Business:

1. Elections

Mr. Brown questioned if they could make a motion to keep the officers as is.

Mr. Glasser stated Mr. Sagasser does work for Otsego County and although the county attorney assured them there would not be problem as long as any conflict of interest was declared, Mr. Sagasser should have the

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opportunity to decide if he would like to continue as chairperson. Being he was not in attendance, they should postpone elections until a time certain.

Motion made by Ms. Bono to postpone the election of officers until a time certain, October 30, 2018; Seconded by Mr. Glasser.

Vice-Chairperson Hoffman requested a roll call vote.

Roll call vote:

Mr. Hoffman: yes

Mr. McCarthy: yes

Mr. Glasser: yes

Mr. Brown: yes

Ms. Bono: yes

2. Terms expiring:
 - a. Colosimo

Mr. Colosimo was sent an application to extend his term on the Zoning Board of Appeals. It should be submitted to Administration downtown so he can be reappointed by the Board of Commissioners.

Old Business: None

Communications: None

ZBA Member Items: None

Motion made by Mr. Glasser to adjourn the meeting; Seconded by Ms. Bono.

Motion approve unanimously.

Adjournment: 7:37 pm by Vice-Chairperson Hoffman

Mike McCarthy, ZBA Secretary

Christine Boyak-Wohlfeil, Recording Secretary

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ATTACHMENT 1:

Measurement from property line to foundation: 3.2'

Overhang: 1'

Drip Edge: 3/4"

Shingles: 5/8"

Total variance request: 4.32'

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ATTACHMENT 2:

**OTSEGO COUNTY
ZONING BOARD OF APPEALS**

**PZBA18-003
VARIANCE
091-210-000-625-01**

Revised:

Exhibit List

- Exhibit #1:* Application for case PZBA18-003 submitted by Applicant
- Exhibit #2:* Otsego County Zoning Map Effective Date March 20, 2010/Amended January 24, 2017
- Exhibit #3:* Otsego County Zoning Ordinance Effective March 20, 2010/Amended July 10, 2018
- Exhibit #4:* Copy of Otsego County Equalization Department record card/QC 1425/365
- Exhibit #5:* Aerial Site Plan
- Exhibit #6:* Survey
- Exhibit #7:* Public Hearing Notice
- Exhibit #8:* Letter to Otsego Lake Township Planning Commission dated August 27, 2018
- Exhibit #9:* Response from Otsego Lake Township Planning Commission dated September 12, 2018
- Exhibit #10:* Map and list of parties notified
- Exhibit #11:* Receipt #01315958
- Exhibit #12:* Finding of Fact/PZBA18-003
- Exhibit #13:* Variance Request from Enchanted Forest Property Owners approved July 12, 2018
- Exhibit #14:* Photographs of structure
- Exhibit #15:* Notarized letter from adjacent property owner dated September 13, 2018

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ATTACHMENT 3:

OTSEGO COUNTY ZONING BOARD OF APPEALS

PZBA18-003
VARIANCE
091-210-000-625-01

Revised:

FINDING OF FACT

1. This is a proposal for a variance for a parcel located in Otsego Lake Township at 11927 Fantasy Dr Frederic, MI 49733. *Exhibit #1, Exhibit #5*
2. The property is located in a RR/Recreation Residential Zoning District. *Exhibit #2*
3. The current side setback requirement is 10 feet in a RR Zoning District. *Exhibit #3*
4. The structure recently built sits 6.8 feet from side property line as measured to foundation. *Exhibit #6*
5. A side setback variance of 4.32 feet to include the existing overhang, drip edge and shingles is requested. *Exhibit #1, Exhibit #6*
6. The purpose of the variance is to allow the reduction in side setback and bring into compliance the structure recently built. *Exhibit #1, Exhibit #6*
7. The proposed property is currently under the ownership of David & Francine Musinski. *Exhibit #4*
8. The proposed property is 1.15 acres. *Exhibit #4*
9. The Public Hearing Notice was published in the Herald Times on September 11, 2018. *Exhibit #7*
10. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #8, Exhibit #9*
11. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #10*
12. The Zoning Administrator has the authority to approve a reduction in setbacks up to 25%; only the Zoning Board of Appeals has the authority to approve a larger reduction. *Exhibit #3*
13. The Zoning Board of Appeals has the authority to approve a *Variance* request after review and fact finding of Section 26.6. *Exhibit #3*
14. The required fees have been collected by Otsego County Land Use Services. *Exhibit #11*
15. An approved variance request from Enchanted Forest Property Owners Association dated July 12, 2018 has been received September 25, 2018. *Exhibit #13*
16. Photographs of the structure built have been received September 25, 2018. *Exhibit #14*

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17. A notarized letter of approval from the adjacent property owner has been received September 25, 2018. *Exhibit #15*

FINDINGS UNDER ARTICLE 17

ARTICLE 17 SCHEDULE OF DIMENSIONS

17.1 Table 1 - LIMITING HEIGHT, DENSITY AND AREA BY ZONING DISTRICTS (See also [Article 21.1 Accessory Buildings](#) and [Article 22 General Exceptions for Area, Height, and Use](#))

Zoning District	R1 & R2	R3	RR	FR & AR	Reserved for future use	Reserved for future use
Min. Lot Area (Sq. feet)	20,000 .46 acre	40,000 .92 acre	20,000 .46 acre	88,000 2.02 acre		
Min. Front Setback (b)(j)	25 ft	25 ft	25 ft	50 ft		
Max. Front Setback	NA	NA	NA	NA		
Min. Side Setback	10 ft	10 ft	10 ft	20 ft		
Min. Rear Setback	30 ft (a, h)	30ft (a, h)	30 ft (a, h)	40 ft (a)		
Min. Lot width (k)	100 ft 150 ft Duplex	100 ft	100 ft	150 ft 300 ft Duplex AR		
Max. % lot coverage	25%	25%	25%	30%		
Max. Building height (l)	35 ft (g)	35 ft (g)	35 ft (g)	35 ft (g)		
Min. Ground Floor area of principal structure (Square feet)	720 (i)	720 (i)	720 (i)	720 (i)		
Min. Width of principal structure	20 ft (i)	11ft (i)	20 ft (i)	11 ft (i)		

Minimum front, side and rear setbacks, and maximum lot coverage modifications of up to twenty-five percent (25%) may be approved by the Zoning Administrator for nonconforming lots, as described in [Article 21.26.1](#) and [21.26.2](#).

Note a: Lots within five hundred (500) feet of lakes, ponds, flowages, rivers, streams: see [Article 18. LOTS NEAR WATER](#).

Note b: Where the front yards of two (2) or more principal buildings in any block, or within five hundred (500) feet in existence at the time of the passage of this Ordinance (or amendment thereto), in the same zoned district or the same side of the road are less than the minimum front yard setback, then any principal building subsequently erected on the same side of the road shall not be required to provide a greater setback than the average for the existing two (2) or more principal buildings.

Note c: On the exterior side yard which borders on a residential district, there shall be provided a setback of not less than twenty (20) feet on the residential side in B1, B2, B3 and HX.

Note d: Loading and unloading space shall be provided in the rear yard in the ratio of at least ten (10) square feet per linear foot of front building wall. Loading space shall not be counted as required off-street parking. Loading zones may be located in other non-required yards if screened or obscured from view from public streets and residential districts.

Note e: Off-street parking may be permitted in the front yard, except that a ten (10) foot wide landscaped buffer is maintained between the front lot line (or right-of-way line) and the parking area.

Note f: No building shall be placed closer than forty (40) feet to the outer perimeter of such district or property line when said use abuts a residential district boundary.

Note g: Subject to approval by the Planning Commission, the maximum height of buildings may be permitted to exceed the maximum stated in the Schedule by up to fifty percent (50%) in R1, R2, R3, RR, B1, B2 and HX Districts; and up to one hundred percent (100%) in all other districts, provided that the applicant can demonstrate that no good purpose would be served by compliance with maximums stated, (as in the case of steep topography, a Planned Unit Development (PUD), or larger site); and further, there is no conflict with airport zoning height restrictions; fire safety is maintained subject to local fire authority approval; and the light, air and/or scenic views of adjoining property is not impaired. The Planning Commission and or

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Zoning Board of Appeals cannot allow a WTG height greater than allowed in [Section 21.47](#) or a Wireless Telecommunication Towers and Facilities greater than the height allowed in the Zoning District PRINCIPAL USES

PERMITTED or PERMITTED USES SUBJECT TO SPECIAL CONDITIONS. Also see [Article 22 GENERAL EXCEPTIONS FOR AREA, HEIGHT AND USE](#).

Note h: [Section 21.1](#) allows a rear setback of ten (10) feet for accessory buildings.

Note i: The foregoing standards shall not apply to a mobile home located in a licensed mobile home park except to the extent required by state or federal law or otherwise specifically required in this Ordinance.

Note j: In instances where the property is adjacent to a public right of way or ingress egress easement dedicated as permanent adequate access to one (1) or more lots, the setback shall be measured from that right of way or ingress egress easement.

Note k: Specific allowable uses have greater minimum lot widths as required in the Zoning District allowable use lists.

Note l: Specific allowable uses have greater allowable heights as stated in the Zoning District allowable use lists, [Article 21](#) and [Article 22, Section 22.3 Height Limits](#), of this ordinance

*****THE SCHEDULE OF DIMENSIONS GRANTS THE ZONING ADMINISTRATOR AUTHORITY TO APPROVE A REDUCTION IN SETBACKS UP TO TWENTY-FIVE PERCENT (25%)**

FINDINGS UNDER SECTION 21.26 NONCONFORMITIES

SECTION 21.26 NONCONFORMITIES

21.26.1 INTENT

It is recognized that there exists within the districts established by this Ordinance and/or by subsequent amendments, lots, buildings, structures, and uses of land and structures which were lawful before this Ordinance was passed or amended which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments.

It is the intent of this Ordinance to permit these legal nonconforming lots, buildings, structures, or uses to continue until they are removed but not to encourage their survival. Minimum front, side and rear setbacks, minimum lot width and maximum lot coverage modifications up to twenty-five percent (25%) may be approved by the Zoning Administrator upon a written finding that such a modification will have no adverse impact on the use or development of adjoining lots or threaten the public health or safety in any way.

21.26.2 NONCONFORMING LOT

A nonconforming lot is a lot that the boundaries of which are recorded in a plat, deed or land contract executed and delivered prior to the effective date of this Ordinance and the width, depth, and/or area of which does not meet the minimum dimensional requirements of the District in which it is located.

A single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the District; provided that yard dimensions and other requirements not involving area or width or both, of the lot shall conform to the regulations for the District in which such lot is located. Minimum front, side and rear setbacks, and maximum lot coverage modifications up to twenty-five percent (25%) may be approved by the Zoning Administrator. Modifications greater than twenty-five percent (25%) may be obtained only by approval of the Board of Appeals.

Where two (2) or more adjoining nonconforming lots are in existence under single ownership, such lots shall be used only in combinations which most closely satisfy the minimum lot size standards prescribed for the District in which said lots are located.

For definition purposes, "most closely" shall apply in situations where, for example, two (2) lots combined do not meet the minimum, but a third (3) lot would exceed the minimum by a greater amount than two (2) lots would fall short; hence, only two (2) lots need to be combined in this case.

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*****ANY SETBACK MODIFICATION GREATER THAN TWENTY-FIVE PERCENT (25%) MAY BE OBTAINED ONLY BY APPROVAL OF THE ZONING BOARD OF APPEALS**

FINDINGS UNDER ARTICLE 26/BOARD OF APPEALS

SECTION 26.6 DIMENSIONAL OR NON-USE VARIANCE

Where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would involve “practical difficulties” within the meaning of this Ordinance, the Zoning Board of Appeals shall have power upon appeal in specific cases to authorize such variation or modification as may be in harmony with the spirit of this Ordinance, and so that public safety and welfare be secured and substantial justice done. No such variance or modification of the provisions of this Ordinance shall be granted unless it appears that there is clear and convincing evidence that all the following facts and conditions exist:

- 26.6.1 That the requested variance will not be detrimental to the public welfare or otherwise injurious to other properties in the same zoning district.
- 26.6.2 That the requested variance is necessary for the applicant to receive a right available to other properties in the same zoning district.
- 26.6.3 That special physical conditions or unique circumstances exist with this property and do not generally apply to other properties in the same zoning district.
- 26.6.4 That the special conditions or circumstances are not the result of actions by the applicant or predecessor in title.
- 26.6.5 That the requested variance is the minimum variance necessary that will make possible the reasonable use of the land.

*****THE ZONING BOARD OF APPEALS HAS THE AUTHORITY TO APPROVE A VARIANCE IF COMPLIANCE IS FOUND WITH THE SECTION 26.6**

Motion made by Mr. Glasser that the requested variance will not be detrimental to the public welfare or otherwise injurious to other properties in the same zoning district; Seconded by Mr. McCarthy.

Section 26.6.1

Roll call vote:

Mr. Hoffman: yes
Mr. McCarthy: yes
Mr. Glasser: yes
Mr. Brown: yes
Ms. Bono: yes

5 yes votes; Motion passed.

Motion made by Ms. Bono that the requested variance is necessary for the applicant to receive a right available to other properties in the same zoning district; Seconded by Mr. McCarthy.

Section 26.6.2

Roll call vote:

Ms. Bono: no
Mr. Brown: yes
Mr. Glasser: no
Mr. McCarthy: no
Mr. Hoffman: no

1 yes – 4 no votes; Motion failed.

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Motion made by Mr. McCarthy that special physical conditions or unique circumstances exist with this property and do not generally apply to other properties in the same zoning district; Seconded by Ms. Bono.

Section 26.6.3

Roll call vote:

Mr. Hoffman: no
Mr. McCarthy: no
Mr. Glasser: no
Mr. Brown: yes
Ms. Bono: no

1 yes – 4 no votes; Motion failed.

Motion made by Ms. Bono that the special conditions or circumstances are not the result of actions by the applicant or predecessor in title; Seconded by Mr. McCarthy.

Section 26.6.4

Roll call vote:

Mr. McCarthy: yes
Mr. Glasser: no
Mr. Brown: yes
Ms. Bono: no
Mr. Hoffman: no

2 yes – 3 no votes; Motion failed.

Motion made by Mr. Glasser that the requested variance is the minimum variance necessary that will make possible the reasonable use of the land; Seconded by Mr. McCarthy

Section 26.6.5

Roll call vote:

Ms. Bono: yes
Mr. Brown: yes
Mr. Glasser: yes
Mr. McCarthy: yes
Mr. Hoffman: yes

5 yes votes; Motion passed.

******* Motion made by Mr. Glasser for approval of variance PZBA18-003 based on clear and correct Finding of Fact and review of Sections 26.6.1 – 26.6.5; Seconded by Mr. McCarthy. (SEE ATTACHMENT 2 &3)

Roll call vote:

Mr. Hoffman: no
Mr. McCarthy: yes
Mr. Glasser: no
Mr. Brown: no
Ms. Bono: no

1 yes – 4 no votes; Motion failed.

Variance denied.

**OTSEGO COUNTY
ZONING BOARD OF APPEALS**

**ZBA19-001
Interpretation**

Exhibit List

- Exhibit #1:* Otsego County Zoning Ordinance Effective March 20, 2010/Amended April 23, 2019
- Exhibit #2:* Housing Law of Michigan (PA 167 of 1917)
- Exhibit #3:* 2015 International Zoning Code
- Exhibit #4:* United States Census Bureau
- Exhibit #5:* Finding of Fact

ARTICLE 2 CONSTRUCTION OF LANGUAGE AND DEFINITIONS

Amended 3.29.2018

SECTION 2.1 CONSTRUCTION OF LANGUAGE

The following rules of construction apply to the text of this Ordinance:

- 2.1.1 The particular shall control the general.
- 2.1.2 In case of a difference of meaning or implication between the text of this Ordinance and any caption or illustration, the text shall control.
- 2.1.3 Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- 2.1.4 A "building" or "structure" includes any part thereof.
- 2.1.5 The phrase "used for" includes "arranged for", "designed for", "intended for", "maintained for", or "occupied for".
- 2.1.6 The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
- 2.1.7 Terms not herein defined shall have the meaning customarily assigned to them.
- 2.1.8 The term "including" means "including but not limited to." It is a term which introduces examples but does not limit the provision to only those examples.
- 2.1.9 Terms referring to the Michigan Department of Natural Resources (DNR) shall be understood to refer to the Michigan Department of Environmental Quality (DEQ) where appropriate.
- 2.1.10 Reference to Soil Erosion and Sedimentation Control as Part 91 of PA 451 shall be understood to mean MCLA Sections 324.9101 through 324.9123 of the Natural Resources and Environmental Protection Act of 1994.

SECTION 2.2 DEFINITIONS

ACCESSORY STRUCTURE: A building, the use of which is incidental to that of the main building, or main use, and which is located on the same lot.

ACCESSORY USE: A use incidental to the principal use of a building or property as defined or limited by the provisions of this Ordinance.

ADULT ENTERTAINMENT USE: Any use of land, whether vacant or combined with structures or vehicles thereon by which said property is devoted to displaying or exhibiting material for entertainment, a significant portion of which includes matter or actions depicting, describing, or presenting "specified sexual activities: or "specified anatomical areas."

Adult entertainment uses shall include:

Adult book or video establishment: An establishment having a substantial or significant portion of its stock in trade books, magazines or other publications, video recordings and films which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," or an establishment with a segment or section devoted to the sale, rent or display of such material.

Adult cabaret: A nightclub, theater or other establishment which features live performances by topless and/or bottomless dancers, "go-go" dancers, exotic dancers, or similar entertainers, where a significant portion of such performances show, depict, or describe "specified sexual activities" or "specified anatomical areas."

BED AND BREAKFAST: Any dwelling used or designed in such a manner that certain rooms in excess of those used by the family and occupied as a dwelling unit, are rented to the transient public for compensation; this includes establishments that are in compliance with Public or State Statutes. Such a use shall have the appearance of a single family residence and be consistent with surrounding neighborhood character.

BILLBOARDS: A billboard shall mean any structure or portion thereof designed or intended to be used for posting, painting, or otherwise affixing any sign which does not pertain to the premises, or to the use of premises on which the billboard is located, or to goods sold or services rendered, or activities conducted on such premises.

BUILDING: A structure erected on-site, a mobile home or mobile structure, a pre-manufactured or pre-cut structure, above or below ground, designed primarily for the shelter, support or enclosure of persons, animals or property of any kind.

BUILDING HEIGHT: The vertical distance measured from the established grade to the highest point of the roof surface for flat roofs; to the deck line of mansard roofs; and the average height between the eaves and ridge for gable, hip, and gambrel roofs. "A" frame structures shall be measured to the highest point of the building. Where a building is located on sloping terrain, the height may be measured from the average ground level of the grade at the building wall.

BUILDING LINE: A line formed by the face of the building, a building line is not to be used when determining setbacks.

BUILDING LENGTH: The greatest overall linear dimension of a building measured at the building footprint.

BUILDING WIDTH: The greatest distance between two (2) sides of a building which extend half or more of its length as measured at the building footprint

BUILD-TO-AREA: The space within the Build-to-Line and the Lot Line Sides. The Build-to-Area may vary a distance on either side of the Build-to-Line. The distance is determined by measuring the number of feet between the Build-to-Line and the public right-of-way and multiplying the number of feet by ten percent (10%).

BUILD-TO-LINE: The line of vertical plane formed by the planned building façade that is parallel to the road right-of-way and extends to and coincides with the plane of the front façade of existing or planned buildings along the same right-of-way.

CARE FACILITY, COMMERCIAL DAY: A facility receiving more than twelve (12) minor children or adults for care for periods of less than twenty-four (24) hours in a day, for more than two (2) weeks in any calendar year. Child care and supervision provided as an accessory use, while parents are engaged or involved in the principal use of the property, such as a nursery operated during church services or public meeting, or by a fitness center or similar operation, shall not be considered Commercial Day Care.

CARE FACILITY, CONVALESCENT OR NURSING HOME: A facility with sleeping accommodations where persons are housed twenty-four (24) hours a day and furnished with meals, nursing and medical care.

CARE FACILITY, FAMILY: A single family residence in which care or supervision is provided for more than one (1) but less than seven (7) minor children or adults. Care for persons related by blood, marriage, or adoption to a member of the family occupying the dwelling is excluded from this definition.

CARE FACILITY, GROUP: A facility in which care or supervision is provided for at least seven (7) but not more than twelve (12) minor children or adults.

CLIMBING BARRIER: Material attached to the lowest eight feet (8') of a lattice tower for the prevention of using structural cross members as a ladder; a safety feature to discourage climbing by unauthorized individuals

DRIP LINE: An imaginary line drawn around the base of a tree to connect the points where drips would fall straight down from the outermost tips of the tree's branches. The drip line generally delineates the ground area containing the root system near the surface which is most sensitive to disturbance

DWELLING UNIT: A single unit providing complete, independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation

DWELLING, ONE-FAMILY: A building containing not more than one (1) dwelling unit designed for residential use

DWELLING, TWO-FAMILY (DUPLEX): Dwelling, Two-Family - A building containing two (2) separate dwelling units designed for residential use.

DWELLING, MULTIPLE-FAMILY: A building containing three or more dwelling units designed for residential use and including a rooming house, bed and breakfast, tourist home, apartment house, group quarters, or extended care facility for seven or more persons, such as adult foster care or alternative institutional setting home. State-licensed residential facilities shall be considered as single-family dwellings when questions of overcrowding and safety are addressed by the state agency issuing the license.

ERECTED: Built, constructed, altered, reconstructed, moved upon, or any physical operations on the premises which are required for construction, excavation, fill, drainage, and the like.

ESSENTIAL SERVICES: The erection, construction, alteration or maintenance of underground, surface, or overhead gas, electrical, steam or water transmission or distribution systems; collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, wires, cables, fire alarm boxes, traffic signals, hydrants, towers, poles, electrical substations, gas regulator stations, and other similar equipment, and applicable accessories reasonably necessary for the furnishing of adequate service by such public utilities or municipal departments or commissions or for the public health, safety, and general welfare. Provided, however, that wireless telecommunication towers and facilities, alternative tower structures, antennas, wind turbine generators and anemometer towers shall not be considered essential services.

EXCAVATION: Any breaking of ground, except common household gardening and ground care.

FAMILY: One (1) or two (2) related persons or parents with their direct lineal descendants and adopted children (and including the domestic employees thereof), together with not more than three (3) persons not so related, living together as a single housekeeping unit.

FARM: Structures, facilities and lands of twenty (20) acres or more for carrying on of any agricultural use or the raising of livestock or small animals as a source of income. [See also [AGRICULTURE](#)]

FENCE: Any permanent or temporary, partition, wall, structure or gate erected as a dividing structure, barrier or enclosure and not part of a structure requiring a building permit.

FENESTRATION: The arrangement of windows and doors on the elevations of a building.

FLOOR AREA, USABLE (FOR COMPUTING PARKING): That area used for, or intended to be used for, the sale of merchandise or services, or for use to serve patrons, clients, or customers. Floor area used, or intended to be used, for the storage or processing of merchandise, hallways, or for utilities or sanitary facilities, shall be excluded for the computation of "Usable Floor Area" All floor levels shall be counted.

FLOWAGE: Body of water impounded by a dam, used interchangeably with reservoir, impoundment, and flood water.

GARAGE, PRIVATE: A building used for the non-commercial storage of property owned by the owners of the parcel on which the building is located.

SHORELAND: Land paralleling the lake shoreline, fifty (50) feet wide as measured from the ordinary high water level. And the land paralleling the banks of all rivers, streams and flowages of water in the County that appear on the most recent U.S. Geological Survey Quadrangle maps, one hundred fifty (150) feet wide, measured from the ordinary high water level, landward, at right angles or radial to the shoreline or bank, on a horizontal plane.

SIGN: The use of any words, numerals, figures, devices, designs or trademarks by which anything is made known such as are used to show an individual, firm, profession or business, and are visible to the general public. Accessory signs pertain to uses, activities or services conducted on the premises where located.

SIGN FACE: The part of a sign structure which is used to graphically communicate a message or announcement including a border space of not less than three (3) inches outside of any lettering or other graphic symbols or depictions.

STORY: That part of a building, except a mezzanine and/or basement, between the surface of one (1) floor and the surface of the next floor, or if there is no floor above, then the ceiling next above.

STREET OR ROAD: A right-of-way, affording the principal means of access to abutting property. Alleys differ in that they offer a secondary means of access to abutting property.

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

TEMPORARY BUILDING OR USE: A use of a building or premises permitted by the Board of Appeals to exist during periods of construction of the main building or use, or for special events.

TOURIST HOME: [See [BED & BREAKFAST.](#)]

TRAVEL TRAILER AND/OR CAMPER: Any trailer, trailer coach, motor home, tent camper, truck-mountable camper, or other unit designed as a vacation or traveling unit for short term occupancy, and which unit is legally licensed or licensable for towing or travel over public highways by ordinary domestic vehicle.

UNNECESSARY HARDSHIP: A situation whereby a property owner, due to the unique or unusual conditions of a lot or parcel, cannot meet specific standards set by the Ordinance within the subject zoning district. Situations created by an owner subsequent to the enactment of this Ordinance shall not be deemed an unnecessary hardship.

USE: The principal purpose for which land or a building is arranged, designed or intended, or for which land or a building is or may be occupied. An accessory use is subordinate and clearly incidental to the principal use.

USES SUBJECT TO SPECIAL CONDITIONS: Refers to special land uses pursuant to PA 110 of 2006, as amended and also pursuant to uses referred to in this Ordinance as special approvals, special uses, special land uses, or conditional uses authorized by special permit.

VARIANCE: A modification of the literal provisions of the Zoning Ordinance which is authorized by the Zoning Board of Appeals when strict enforcement of the Ordinance would cause practical difficulties or unnecessary hardship for the property owner.

VEHICLE: Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices exclusively moved by human power or used exclusively upon stationary rails or tracks and excepting a mobile home as defined in Section 2 of Act No. 419 of the Public Acts of 1976, being section 125.1102 of the Michigan Compiled Laws.

VEHICLE REPAIR: Any major activity involving the general repair, rebuilding or reconditioning of vehicles, engines or trailers; collision services, such as body, frame, or fender straightening and repair; overall painting and vehicle rust-proofing; refinishing or steam cleaning.

ARTICLE 5 R2 GENERAL RESIDENTIAL DISTRICT

Amended 3.29.2018

INTENT

The R2 General Residential District is designed to provide for multiple-family structures. This district is further intended to be a transitional use district, such as a location between residential districts and non-residential districts.

SECTION 5.1 PRINCIPAL USES PERMITTED

No building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses:

5.1.1 All principal uses permitted in the [R1](#) District [See [Article 4.1](#)]

5.1.2 Multiple family dwellings including rooming houses, bed and breakfast homes, tourist homes, apartment houses, group quarters, housing for the elderly, subject to the requirements of [Article 17 SCHEDULE OF DIMENSIONS](#), and approval of the County Health Department

5.1.3 Group care facilities, meeting applicable state licensing requirements

5.1.4 The following uses provided there is direct access to a county primary or state trunkline highway, as defined by the County Road Commission:

5.1.4.1 Retail specialty stores when operated by the property owner within a completely enclosed building with no outdoor storage or display; to include: apparel, antiques, ceramics, florists, food stores, fruit markets, gifts hobby shops [Permit criteria include [Article 21.12.02](#), [21.12.03](#)]

5.1.5 WTG Building-Mounted: Permitted as an accessory use to an allowed Principal Use

SECTION 5.2 PERMITTED USES SUBJECT TO SPECIAL CONDITIONS

The following uses may be permitted, subject to the conditions herein imposed for each use, the review standards of [Article 19](#) and only after the review and approval of the site plan by the Planning Commission. [See [Article 21](#) for applicable Specific Requirements for Certain Uses, if any and [Article 23](#) for Site Plan Requirements.]

5.2.1 All uses subject to special conditions in the [R1](#) District

5.2.2 The following uses provided there is direct access to a County primary or State trunkline highway, as defined by the County Road Commission:

5.2.2.1 Motels and hotels provided there is a minimum lot width of one hundred fifty (150) feet

5.2.2.2 Fraternal halls, sportsmen associations, and athletic clubs within completely enclosed buildings with a minimum lot of five (5) acres with a road frontage of two hundred (200) feet

5.2.2.3 Professional offices for medical, dental, legal, engineering, architectural, or accounting services

5.2.2.4 Convenience retail establishments

5.2.3 Churches

5.2.4 Manufactured Housing Parks

5.2.5 Hospitals Convalescent or Nursing Home Care Facilities

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ARTICLE 6 R3 RESIDENTIAL ESTATES DISTRICT

INTENT

The R3 Residential Estates District is established to provide for areas topographically and locationally well suited to meet an increasing market for ten (10) acre lots and larger, which can potentially be resubdivided into smaller lots. This district is to encourage the orderly transition of land to low density residential use.

SECTION 6.1 PRINCIPAL USES PERMITTED

No building or land shall be used and no building shall be erected except for one or more of the following specified uses:

- 6.1.1 All principal uses permitted in the [R1](#) District [See [Article 4.1](#)]
- 6.1.2 Fraternal lodges
- 6.1.3 Wildlife, plant and habitat preservation areas
- 6.1.4 Group care facilities meeting applicable state licensing requirements
- 6.1.5 Retail specialty store as permitted in [Article 5.1.4](#)
- 6.1.6 Roadside stands (agricultural-temporary) off the road right-of-way, provided that the stand be operated only seasonally, that hours not exceed dawn to dusk, that large equipment, including semi-tractor-trailers, not be parked at the site, and that the parking requirements of [Article 21.27](#) be observed
- 6.1.7 Temporary Recreation Housing/Travel trailers. Permit criteria include [Article 21.33](#)
- 6.1.8 WTG Building-Mounted: Permitted as an accessory use to an allowed Principal Use
- 6.1.9 WTG Small: Permitted as an accessory use to an allowed Principal Use

SECTION 6.2 PERMITTED USES SUBJECT TO SPECIAL CONDITIONS

The following uses may be permitted, subject to the conditions herein imposed for each use, the review standards of [Article 19](#) and only after the review and approval of the site plan by the Planning Commission. [See [Article 21](#) for applicable Specific Requirements for Certain Uses, if any, and [Article 23](#) Site Plan Requirements.]

- 6.2.1 All principal uses permitted in the R2 District, and all permitted uses subject to special conditions in the R1 District [See [Article 4.2](#)] and R2 District [See [Article 5.2](#)]
- 6.2.2 Gasoline stations with store
- 6.2.3 Driving range
- 6.2.4 Campgrounds (Commercial or Non-commercial)
- 6.2.5 Manufactured Housing Parks
- 6.2.6 Personal Wireless Services Telecommunications Towers and Facilities one hundred fifty (150) feet or less in height, self-supporting (lattice) or guyed [Permit criteria includes [Article 21.46](#)]
- 6.2.7 Unlisted property uses if authorized under [Article 21.44](#)

ARTICLE 17 SCHEDULE OF DIMENSIONS

17.1 Table 1 - LIMITING HEIGHT, DENSITY, AND AREA BY ZONING DISTRICTS (See also [Article 21.1 Accessory Buildings](#) and [Article 22 General Exceptions for Area, Height, and Use](#))

<i>Zoning District</i>	R1 & R2	R3	RR	FR & AR	Reserved for future use	Reserved for future use
Min. Lot Area (Sq. feet)	20,000 .46 acre	40,000 .92 acre	20,000 .46 acre	88,000 2.02 acre		
Min. Front Setback (b)(j)	25 ft	25 ft	25 ft	50 ft		
Max. Front Setback	NA	NA	NA	NA		
Min. Side Setback	10 ft	10 ft	10 ft	20 ft		
Min. Rear Setback	30 ft (a, h)	30ft (a, h)	30 ft (a, h)	40 ft (a)		
Min. Lot width (k)	100 ft 150 ft Duplex	100 ft	100 ft	150 ft 300 ft Duplex AR		
Max. % lot coverage	25%	25%	25%	30%		
Max. Building height (l)	35 ft (g)	35 ft (g)	35 ft (g)	35 ft (g)		
Min. Ground Floor area of principal structure (Square feet)	720 (i)	720 (i)	720 (i)	720 (i)		
Min. Width of principal structure	20 ft (i)	14ft (i)	20 ft (i)	14 ft (i)		

<i>Zoning District</i>	B1	B2	B3	I	HX	MUZ	
						MAIN ST	TOWN CENTER
Min. Lot Area (Square feet)	10,000	10,000	20,000	40,000	10,000	8,000	8,000
Min. Front Setback	30 ft (e)	Build-to-Area	Build-to-Area				
Max. Front Setback	NA	NA	NA	NA	NA	NA	NA
Min. Side Setback	10 ft (c)	5 ft	5ft				
Min. Rear Setback	20 ft (a, d, f)	10 ft	10 ft				
Min. Lot width (k)	100 ft	100 ft	100 ft	150 ft	150 ft	60 ft	60 ft
Max. % lot coverage	NA	NA	NA	NA	NA	NA	NA
Max. Building height (l)	35 ft (g)	35 ft	35 ft				
Min. Ground Floor area principal structure (Square feet)	NA	NA	NA	NA	NA	NA	NA
Min. Width of principal structure	NA	NA	NA	NA	NA	NA	NA

Minimum front, side and rear setbacks, and maximum lot coverage modifications of up to twenty-five percent (25%) may be approved by the Zoning Administrator for nonconforming lots, as described in [Article 21.26.1](#) and [21.26.2](#).

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- Note a: Lots within five hundred (500) feet of lakes, ponds, flowages, rivers, streams: see [Article 18, LOTS NEAR WATER](#).
- Note b: Where the front yards of two (2) or more principal buildings in any block, or within five hundred (500) feet in existence at the time of the passage of this Ordinance (or amendment thereto), in the same zoned district or the same side of the road are less than the minimum front yard setback, then any principal building subsequently erected on the same side of the road shall not be required to provide a greater setback than the average for the existing two (2) or more principal buildings.
- Note c: On the exterior side yard which borders on a residential district, there shall be provided a setback of not less than twenty (20) feet on the residential side in B1, B2, B3 and HX.
- Note d: Loading and unloading space shall be provided in the rear yard in the ratio of at least ten (10) square feet per linear foot of front building wall. Loading space shall not be counted as required off-street parking. Loading zones may be located in other non-required yards if screened or obscured from view from public streets and residential districts.
- Note e: Off-street parking may be permitted in the front yard, except that a ten (10) foot wide landscaped buffer is maintained between the front lot line (or right-of-way line) and the parking area.
- Note f: No building shall be placed closer than forty (40) feet to the outer perimeter of such district or property line when said use abuts a residential district boundary.
- Note g: Subject to approval by the Planning Commission, the maximum height of buildings may be permitted to exceed the maximum stated in the Schedule by up to fifty percent (50%) in R1, R2, R3, RR, B1, B2 and HX Districts; and up to one hundred percent (100%) in all other districts, provided that the applicant can demonstrate that no good purpose would be served by compliance with maximums stated, (as in the case of steep topography, a Planned Unit Development (PUD), or larger site); and further, there is no conflict with airport zoning height restrictions; fire safety is maintained subject to local fire authority approval; and the light, air and/or scenic views of adjoining property is not impaired. The Planning Commission and or Zoning Board of Appeals cannot allow a WTG height greater than allowed in [Section 21.47](#) or a Wireless Telecommunication Towers and Facilities greater than the height allowed in the Zoning District PRINCIPAL USES PERMITTED or PERMITTED USES SUBJECT TO SPECIAL CONDITIONS. Also see [Article 22 GENERAL EXCEPTIONS FOR AREA, HEIGHT AND USE](#) .
- Note h: [Section 21.1](#) allows a rear setback of ten (10) feet for accessory buildings.
- Note i: The foregoing standards shall not apply to a mobile home located in a licensed mobile home park except to the extent required by state or federal law or otherwise specifically required in this Ordinance.
- Note j: In instances where the property is adjacent to a public right of way or ingress egress easement dedicated as permanent adequate access to one (1) or more lots, the setback shall be measured from that right of way or ingress egress easement.
- Note k: Specific allowable uses have greater minimum lot widths as required in the Zoning District allowable use lists.
- Note l: Specific allowable uses have greater allowable heights as stated in the Zoning District allowable use lists, [Article 21](#) and [Article 22, Section 22.3 Height Limits](#), of this ordinance

17.2 MULTIPLE DWELLINGS - BULK, DENSITY AND AREA

Minimum floor area per each unit	Lot size
Efficiency 250 square feet	Minimum width 200 feet at front building line
One (1) bedroom 400 square feet	Minimum 40,000 square feet for any combination of six (6) bedrooms For every bedroom over six (6), add 1,000 square feet to the minimum lot size
Two (2) bedroom 500 square feet	
Three (3) bedroom 600 square feet	

Multiple Dwellings require a County Health Department written approval and/or permit for all proposed or installed septic tanks and wells. For the purpose of applying yard regulation, multiple-family dwellings shall be considered as one (1) building occupying one (1) lot. When more than one (1) multiple-dwelling building occupies one (1) lot, the structures must be separated by at least thirty (30) feet when end to end, sixty (60) feet when back to back or face to face, and forty (40) feet when end to face or back.

ARTICLE 26 BOARD OF APPEALS

SECTION 26.1 CREATION AND MEMBERSHIP

A Zoning Board of Appeals, first established by the Zoning Ordinance adopted August 8, 1965, is hereby retained in accordance with Public Act 110 of 2006, as amended, known as the Michigan Zoning Enabling Act. The Zoning Board of Appeals shall perform its duties and exercise its powers in such a way that the objectives of this Ordinance shall be observed, public safety secured, and substantial justice done.

The Zoning Board of Appeals shall consist of the following seven (7) regular members and not more than two (2) alternate members, each of whom shall be appointed by the Board of County Commissioners:

- 26.1.1 One (1) of the regular members of the Zoning Board of Appeals shall be a member of the Planning Commission but shall not serve as chairperson of the Zoning Board of Appeals. [Sec. 3601 (4)]
- 26.1.2 One (1) regular or alternate member of the Zoning Board of Appeals may be a member of the Board of County Commissioners but shall not serve as chairperson of the Zoning Board of Appeals. An employee or contractor of the Board of County Commissioners may not serve as a member of the Zoning Board of Appeals. [Sec. 3601 (6)]
- 26.1.3 The remaining regular members, and any alternate members, shall be selected from the electors residing within Otsego County but outside the City of Gaylord or the Village of Vanderbilt. The members selected shall be representative of the population distribution and of the various interests present in Otsego County. [Sec. 3601 (5)]
- 26.1.4 An alternate member may be called as specified to serve as a member of the Zoning Board of Appeals in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made and shall have the same voting rights as a regular member of the Zoning Board of Appeals. [Sec. 3601 (7)]
- 26.1.5 A member of the Zoning Board of Appeals may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his or her duties. [Sec. 3601 (8)]
- 26.1.6 A member of the Zoning Board of Appeals may be removed by the Board of County Commissioners for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office. [Sec. 3601 (9)]
- 26.1.7 The terms of office for members appointed to the Zoning Board of Appeals shall be for staggered three (3) years, except for members serving because of their membership on the County Planning Commission or Board of County Commissioners, whose terms shall be limited to the time they are members of those bodies. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. [Sec. 3601 (10)]
- 26.1.8 Vacancies for unexpired terms shall be filled for the remainder of the term in the same manner as the original appointment. [Sec. 3601 (11)]

SECTION 26.2 JURISDICTION

26.2.1 The Zoning Board of Appeals shall have all the powers and duties granted by State law and this Ordinance, including the following specific powers:

26.2.1.1 Interpretation of the Zoning Ordinance Text and Map: To hear and decide requests for interpretation of the zoning map and zoning text, as well as for decisions on other special questions on which this Ordinance specifically authorizes the Zoning Board of Appeals to pass. [Sec. 3603 (1)]

26.2.1.2 Administrative Review: To hear and decide appeals where it is alleged by the appellant that there is an error in any administrative order, requirement, decision, or determination made by the Planning Commission or a Land Use Services officer charged with enforcement of this Ordinance. [Sec. 3603 (1)]

26.2.1.3 Variances: To grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of this Ordinance or to any other nonuse-related standard in the ordinance. [Sec. 3604 (8)]

26.2.2 Exceptions: The Otsego County Zoning Ordinance does not provide for appeals to the Zoning Board of Appeals for special land use or planned unit development decisions.

26.2.2.1 The Zoning Board of Appeals shall have no jurisdiction over a decision of the Planning Commission in regard to matters concerning the granting of special use permits. [Section 19.13 of the current Zoning Ordinance]

SECTION 26.3 MEETINGS

26.3.1 The Zoning Board of Appeals shall not conduct business unless a majority of the regular members of the Zoning Board of Appeals are present. [Sec. 3601 (12)]

26.3.2 Meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at other times as the Zoning Board of Appeals in its rules of procedure may specify. [Sec. 3602 (1)]

26.3.3 All meetings conducted by the Zoning Board of Appeals shall comply with the Open Meetings Act.

26.3.4 The Zoning Board of Appeals shall maintain a record of its proceedings which shall be filed in the office of the County Clerk. [Sec. 3602 (2)]

SECTION 26.4 PROCEDURES

26.4.1 The Zoning Board of Appeals shall establish and adopt its own rules of procedures. [Sec. 3603 (1)]

26.4.2 The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses. [Sec. 3602 (1)]

26.4.3 An appeal to the Zoning Board of Appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of the state or 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. [Sec. 3604 (1)]

26.4.4 An appeal to the Zoning Board of Appeals must be filed within twenty-one (21) days of the date the decision or order being appealed was communicated in writing by the Land Use Services officer to the aggrieved party. The applicant shall specify the grounds for the appeal on the appropriate application form along with the payment of established fees with the Land Use Services officer. The

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HOUSING LAW OF MICHIGAN
Act 167 of 1917

AN ACT to promote the health, safety and welfare of the people by regulating the maintenance, alteration, health, safety, and improvement of dwellings; to define the classes of dwellings affected by the act, and to establish administrative requirements; to prescribe procedures for the maintenance, improvement, or demolition of certain commercial buildings; to establish remedies; to provide for enforcement; to provide for the demolition of certain dwellings; and to fix penalties for the violation of this act.

History: 1917, Act 167, Eff. Aug. 10, 1917;—Am. 1976, Act 116, Imd. Eff. May 14, 1976;—Am. 1992, Act 144, Eff. Mar. 31, 1993.

The People of the State of Michigan enact:

ARTICLE I
GENERAL PROVISIONS.

125.401 Short title; scope of act.

Sec. 1. (1) This act shall be known and may be cited as the "housing law of Michigan".

(2) This act applies to each city, village, and township that, according to the last regular or special federal census, has a population of 10,000 or more. However, this act does not apply to private dwellings and 2-family dwellings in any city, village, or township having a population of less than 100,000 unless the legislative body of the local governmental unit adopts the provisions by resolution passed by a majority vote of its members.

(3) This act applies to all dwellings within the classes defined in section 2, except that a reference to 1 or more specific classes of dwellings applies only to those classes to which specific reference is made.

History: 1917, Act 167, Eff. Aug. 10, 1917;—Am. 1919, Act 326, Imd. Eff. May 13, 1919;—CL 1929, 2487;—Am. 1939, Act 303, Eff. Sept. 29, 1939;—Am. 1941, Act 91, Imd. Eff. May 16, 1941;—CL 1948, 125.401;—Am. 1976, Act 137, Imd. Eff. June 2, 1976;—Am. 2008, Act 408, Imd. Eff. Jan. 6, 2009;—Am. 2016, Act 14, Eff. May 16, 2016.

Compiler's note: The catchlines following the act section numbers of this act were incorporated as a part of the act when enacted.

125.402 Housing law of Michigan; definitions.

Sec. 2. Definitions. Certain words in this act are defined for the purposes thereof as follows: Words used in the present tense include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word "person" includes a corporation as well as a natural person.

(1) Dwelling. A "dwelling" is any house, building, structure, tent, shelter, trailer or vehicle, or portion thereof, (except railroad cars, on tracks or rights-of-way) which is occupied in whole or in part as the home, residence, living or sleeping place of 1 or more human beings, either permanently or transiently. A house trailer or other vehicle, when occupied or used as a dwelling, shall be subject to all the provisions of this act, except that house trailers or other vehicles, duly licensed as vehicles, may be occupied or used as a dwelling for reasonable periods or lengths of time, without being otherwise subject to the provisions of this act for dwellings, when located in a park or place designated or licensed for the purpose by the corporate community within which they are located: Provided, That such parking sites are equipped with adequate safety and sanitary facilities.

(1a). "Sub-standard dwelling" is a dwelling of any class which is not so equipped as to have each of the following items: running water, inside toilets; or a dwelling which has either inadequate cellar drainage, defective plumbing, and inside room having no windows therein, improper exits or defective stairways so as to make such dwelling a fire hazard.

(2) Classes of dwellings. For the purposes of this act dwellings are divided into the following classes: (a) "private dwellings," (b) "2 family dwellings," and (c) "multiple dwellings."

(a) A "private dwelling" is a dwelling occupied by but 1 family, and so designed and arranged as to provide cooking and kitchen accommodations for 1 family only.

(b) A "2 family dwelling" is a dwelling occupied by but 2 families, and so designed and arranged as to provide cooking and kitchen accommodations for 2 families only.

(c) A "multiple dwelling" is a dwelling occupied otherwise than as a private dwelling or 2 family dwelling.

(3) Classes of multiple dwellings. All multiple dwellings are dwellings and for the purpose of this act are divided into 2 classes, viz.: class a and class b.

Class a. Multiple dwellings of class a are dwellings which are occupied more or less permanently for residence purposes by several families and in which the rooms are occupied in apartments, suites or groups, in

which each combination of rooms is so arranged and designed as to provide for cooking accommodations and toilet and kitchen sink accommodations within the separate units. This class includes tenement houses, flats, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, and all other dwellings similarly occupied whether specifically enumerated herein or not.

Class b. Multiple dwellings of class b are dwellings which are occupied, as a rule transiently, as the more or less temporary abiding place of individuals who are lodged, with or without meals, and in which as a rule the rooms are occupied singly and without any attempt to provide therein or therewith cooking or kitchen accommodations for the individual occupants. This class includes hotels, lodging houses, boarding houses, furnished room houses, club houses, convents, asylums, hospitals, jails and all other dwellings similarly occupied, whether specifically enumerated herein or not.

(3a) Rooming house. A "rooming house" under this act shall be construed to mean any dwelling occupied in such a manner that certain rooms, in excess of those used by the members of the immediate family and occupied as a home or family unit, are leased or rented to persons outside of the family, without any attempt to provide therein or therewith, cooking or kitchen accommodations for individuals leasing or renting rooms. In the case of single and 2 family dwellings the number of such bedrooms leased or rented to roomers shall not exceed 3, unless such dwellings be made to comply in all respects with the provisions of this act relating to multiple dwellings.

(4) Hotel. A "hotel" is a multiple-dwelling of class b in which persons are lodged for hire and in which there are more than 50 sleeping rooms, a public dining room for the accommodation of at least 50 guests, and a general kitchen.

(5) Mixed occupancy. In cases of mixed occupancy where a building is occupied in part as a dwelling, the part so occupied shall be deemed a dwelling for the purposes of this act and shall comply with the provisions thereof relative to dwellings.

(6) Yards. A "rear yard" is an unoccupied space on the same lot with a dwelling, between the extreme rear line of the dwelling and the rear lot line and extending from 1 side lot line to the other side lot line. A "side yard" is an unoccupied space on the same lot with a dwelling between the side lot line and the nearest side line of the dwelling and extending from the extreme rear line of the dwelling to the front lot line. A "front yard" is an unoccupied space on the same lot with a dwelling between the extreme front line of the house and the front lot line and extending from 1 side yard to the other side yard.

(7) Courts. A "court" is an open unoccupied space on the same lot with a dwelling and bounded on 2 or more sides with the walls of the dwelling. A court not extending to the street or front or rear yard is an "inner court". A court extending to the street or front or rear yard is an "outer court".

(8) Corner and interior lots. A "corner lot" is a lot of which at least 2 adjacent sides abut for their full length upon a street. A lot other than a corner lot is an "interior lot."

(9) Front, rear and depth of lot. The front of a lot is that boundary line which borders on the street. In case of a corner lot the owner may elect by statement on his plans either street boundary line as the front. The rear of a lot is the side opposite to the front. In the case of a triangular or gore lot the rear is the boundary line not bordering on a street. The depth of a lot is the dimension measured from the front of the lot to the extreme rear line of the lot. In the case of irregular shaped lots the mean depth shall be taken.

(10) Public hall. A "public hall" is a hall, corridor or passageway not within the exclusive control of 1 family.

(11) Stair hall. A "stair hall" is a public hall and includes the stairs, stair landings and those portions of the building through which it is necessary to pass in going between the entrance floor and the roof.

(12) Basement, cellar, attic, penthouses.

(a) A "basement" is that portion of a building partly below grade but so located that the vertical distance from grade to the floor is not greater than the vertical distance from the grade to the ceiling: Provided, however, That if the vertical distance from the grade to the ceiling is 5 feet or more such basement shall be counted as a story.

(b) A "cellar" is that portion of a building partly below grade but so located that the vertical distance from the grade to the floor is greater than the vertical distance from the grade to the ceiling: Provided, however, That if the vertical distance from the grade to the ceiling is 5 feet or more such cellar shall be counted as a story. A cellar, except as provided above, shall not be counted as a story. If any portion of a building is in that part the equivalent of a basement or cellar, the provisions of this act relative to basements and cellars shall apply to such portion of the building.

(c) An attic is a portion of a building situated partly or wholly in the roof space. An attic which is used only as a portion of a single or 2 family dwelling shall be not counted as a story, unless there are more than 2 rooms suitable for living purposes on this floor. For the purpose of this paragraph, rooms of 160 square feet or more will be regarded as 2 or more rooms based on each 80 square feet being considered 1 room. Any attic

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Exhibit 3

CHAPTER 2

DEFINITIONS

SECTION 201

GENERAL

201.1 Scope.

Unless otherwise expressly stated, the following words and terms shall, for the purposes of this code, have the meanings shown in this chapter.

201.2 Interchangeability.

Words used in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

201.3 Terms defined in other codes.

Where terms are not defined in this code and are defined in the *International Building Code* or the *International Mechanical Code*, such terms shall have the meanings ascribed to them as in those codes.

201.4 Terms not defined.

Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

SECTION 202

GENERAL DEFINITIONS

ABANDONED ~~SIGN.~~~~See~~ SIGN. See Section 1002.1.

ACCESSORY ~~BUILDING.~~~~An~~ BUILDING. An incidental subordinate building customarily incidental to and located on the same lot occupied by the main use or building, such as a detached garage.

ACCESSORY LIVING QUARTERS. An accessory building used solely as the temporary dwelling of guests of the occupants of the premises; such dwelling having no *kitchen* facilities and not rented or otherwise used as a separate *sleeping unit*.

ACCESSORY ~~USE.~~~~A~~ USE. A use conducted on the same lot as the primary use of the structure to which it is related; a use that is clearly incidental to, and customarily found in connection with, such primary use.

~~AGRICULTURE.~~~~The~~ AGRICULTURE. The tilling of the soil, raising of crops, *farm animals*, *livestock*, horticulture, gardening, beekeeping and aquaculture.

~~ALLEY.~~Any ALLEY. Any public way or thoroughfare more than 10 feet (3048 mm), but less than 16 feet (4877 mm), in width, which has been dedicated to the public for public use.

[A] ~~ALTERATION.~~Any- ALTERATION. Any change, addition or modification in construction, occupancy or use.

AMUSEMENT CENTER. An establishment offering five or more amusement devices, including, but not limited to, coin-operated electronic games, shooting galleries, table games and similar recreational diversions within an enclosed building.

ANIMATED ~~SIGN.~~See- SIGN. See Section 1002.1.

Electrically ~~activated.~~See- activated. See Section 1002.1.

Environmentally activated. See Section 1002.1.

Mechanically ~~activated.~~See- activated. See Section 1002.1.

APARTMENT HOUSE. A residential building designed or used for three or more dwelling units.

ARCHITECTURAL ~~PROJECTION.~~See- PROJECTION. See Section 1002.1.

AUTOMOTIVE REPAIR, ~~MAJOR.~~An- MAJOR. An establishment primarily engaged in the repair or maintenance of motor vehicles, trailers and similar large mechanical equipment, including paint, body and fender, and major engine and engine part overhaul, which is conducted within a completely enclosed building.

AUTOMOTIVE REPAIR, ~~MINOR.~~An- MINOR. An establishment primarily engaged in the repair or maintenance of motor vehicles, trailers and similar mechanical equipment, including brake, muffler, upholstery work, tire repair and change, lubrication, tune ups, and transmission work, which is conducted within a completely enclosed building.

AUTOMOTIVE SELF-SERVICE MOTOR FUEL DISPENSING FACILITY. That portion of property where flammable or combustible liquids or gases used as fuel are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles by persons other than a service station attendant. Such an establishment shall be permitted to offer for sale at retail other convenience items as a clearly secondary activity and shall be permitted ~~also~~ to include a free-standing automatic car wash.

AUTOMOTIVE SERVICE MOTOR FUEL DISPENSING ~~FACILITY.~~That- FACILITY. That portion of property where flammable or combustible liquids or gases used as fuel are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles. Accessory activities shall be permitted to include automotive repair and maintenance, car wash service, and food sales.

~~AWNING.~~See- AWNING. See Section 1002.1.

AWNING ~~SIGN.~~See- SIGN. See Section 1002.1.

BACKLIT ~~AWNING.~~See- AWNING. See Section 1002.1.

2010 American Community Survey/Puerto Rico Community Survey Group Quarters Definitions

Group Quarters

A group quarters is a place where people live or stay, in a group living arrangement, that is owned or managed by an entity or organization providing housing and/or services for the residents. This is not a typical household-type living arrangement. These services may include custodial or medical care as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in group quarters are usually not related to each other.

Group quarters include such places as college residence halls, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, and workers' dormitories.

1. Correctional Facilities for Adults

Correctional Residential Facilities

These are community-based facilities operated for correctional purposes. The facility residents may be allowed extensive contact with the community, such as for employment or attending school, but are obligated to occupy the premises at night.

Examples are halfway houses, restitution centers, and prerelease, work release, and study centers.

Federal Detention Centers

Stand alone, generally multi-level, federally operated correctional facilities that provide "short-term" confinement or custody of adults pending adjudication or sentencing. These facilities may hold pretrial detainees, holdovers, sentenced offenders, and Immigration and Customs Enforcement (ICE) inmates, formerly called Immigration and Naturalization Service (INS) inmates. These facilities include: Metropolitan Correctional Centers (MCCs), Metropolitan Detention Centers (MDCs), Federal Detention Centers (FDCs), Bureau of Indian Affairs Detention Centers, ICE Service Processing Centers, and ICE contract detention facilities.

**OTSEGO COUNTY
ZONING BOARD OF APPEALS**

**ZBA19-001
INTERPRETATION OF MULTIPLE FAMILY DWELLINGS**

FINDING OF FACT

1. This is a proposal to determine whether multiple single-family dwellings, less than 720 square feet, occupying a single parcel, are considered multiple family dwellings under the Otsego County Zoning Ordinance. *Exhibit #1, Exhibit #5*
2. For terms defined in this finding of fact, the following bodies of text are referenced in order of weight of importance: (1) definitions provided in Article 2 of the Otsego County Zoning Ordinance; (2) definitions contained in State of Michigan Statute; (3) International Zoning Code of 2015 definitions; and (4) definitions provided by federal government organizations. *Exhibit #1, Exhibit #2, Exhibit #3, Exhibit #4*
3. A multiple family dwelling is defined in Article 2 as "A building containing three or more dwelling units designed for residential use and including a rooming house, bed and breakfast, tourist home, apartment house, group quarters, or extended care facility for seven or more persons, such as adult foster care or alternative institutional setting home. State-licensed residential facilities shall be considered as single-family dwellings when questions of overcrowding and safety are addressed by the state agency issuing the license." *Exhibit #1*
4. A rooming house is not defined by the Otsego County Zoning Ordinance. The Housing Law of Michigan (PA 167 of 1917) defines a rooming house as "...any dwelling occupied in such a manner that certain rooms, in excess of those used by the members of the immediate family and occupied as a home or family unit, are leased or rented to persons outside of the family, without any attempt to provide therein or therewith, cooking or kitchen accommodations for individuals leasing or renting rooms..." *Exhibit #2*
5. A bed and breakfast is defined in Article 2 as, "Any dwelling used or designed in such a manner that certain rooms in excess of those used by the family and occupied as a dwelling unit, are rented to the transient public for compensation; this includes establishments that are in compliance with Public or State Statutes. Such a use shall have the appearance of a single family residence and be consistent with surrounding neighborhood character." *Exhibit #1*
6. The definition of tourist home in Article 2 is the same as that of a bed and breakfast. *Exhibit #1*
7. Apartment house is not defined in the Ordinance. Article 2 defines apartments the same as multiple family dwellings. Apartment houses are not defined in any State of Michigan Statute. The 2015 International Zoning Code defines an apartment house as, "A residential building designed or used for three or more dwelling units." *Exhibit #3*
8. Article 2 does not define group quarters. The term is also not defined in any State of Michigan Statute or in the International Zoning Code. The United States Census Bureau defines group quarters as, "...a place where people live or stay, in a group living arrangement, that is owned or managed by an entity or organization, providing housing and/or services for the residents..." *Exhibit #4*
9. Single-family dwellings are defined as "a building containing not more than one (1) dwelling unit designed for residential use" in Article 2 of the Zoning Ordinance. *Exhibit #1*
10. Multiple family dwellings are a permitted use in the R2 district. *Exhibit #1*
11. Multiple family dwellings are a special use in the R3 district. *Exhibit #1*

12. Multiple family dwellings have a minimum ground floor area requirement of 250 square feet per unit (section 17.2, Table 2). Single family dwellings have a minimum ground floor area requirement of 720 square feet (section 17.1, Table 1). *Exhibit #1*
13. The Zoning Board of Appeals has the authority to hear and decide requests for interpretation of the zoning map and zoning text, as stated in Section 26.2.1.1 of the Ordinance. *Exhibit #1*
14. Section 26.4.3 of the Ordinance gives the Department of Planning and Zoning the authority to make an appeal to the Zoning Board of Appeals. *Exhibit #1*
15. A Zoning Board of Appeals Agenda was posted on April 22, 2019. *Exhibit #5*

BYLAWS OF THE OTSEGO COUNTY ZONING BOARD OF APPEALS

ARTICLE I Name/Origin

- Section 1 This Board shall be officially known as the Otsego County Zoning Board of Appeals, hereinafter called the Zoning Board of Appeals or the ZBA.
- Section 2 The ZBA is established pursuant to the Otsego County Zoning Ordinance, adopted October 9, 2001 hereinafter called the Ordinance. Specifically, refer to **Article 26** of the Ordinance.

ARTICLE II Purpose of the Zoning Board of Appeals

- Section 1 The purpose of the ZBA is to serve the quasi-judicial function of the Ordinance implementation, interpretation, and enforcement. The ZBA provides a means of resolving zoning related disputes and ensuring equal justice outside of the court system.

ARTICLE III Powers of the ZBA

- Section 1 The ZBA shall perform duties and exercise powers as provided in the Ordinance enacted pursuant to Public Act 110 of 2006, as amended (being the Michigan Zoning Enabling Act, M.C.L. 125.3601 *et seq.*) and in such a way that the objectives of the Ordinance shall be observed, public safety secured, and substantial justice done.
- Section 2 The ZBA will apply the provisions and follow the guidelines found in **Article 26, Section 26.5.3** of the Ordinance.
- Section 3 On appeal, the ZBA may affirm, modify, remand or reverse the decision(s) of the Zoning Administrator or Planning Commission, in accordance with the provisions of Public Act 110 of 2006; M.C.L. 125.3601 *et seq.*
- Section 4 An appeal shall be taken before the ZBA within the time frame discussed in **Section 26.3** of the Ordinance.
- Section 5 The decision of the ZBA shall be final. A party aggrieved by the decision may appeal to the Circuit Court. (M.C.L. 125.3605)

ARTICLE IV
Membership

- Section 1 The membership of the ZBA is as detailed in Article 26, Section 26.1 of the Ordinance.
- Section 2 Attendance: Members are expected to attend all ZBA meetings. If any member of the ZBA is absent from three consecutive regularly scheduled meeting, then that member shall be subject to removal as described in Section 3 of this Article.
- Section 3 Removal: A member of the ZBA may be removed by the Otsego County Board of Commissioners for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. (M.C.L. 125.3601 (9))
- Section 4 Filling Vacancies: A vacancy of the ZBA shall be filled for the remainder of the unexpired term in the same manner as the original appointment. (M.C.L. 125.3601 (11))
- Section 5 A member of the ZBA may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his or her duties (M.C.L. 125.3601 (8)) at a rate established by the Otsego County Board of Commissioners.
- Section 6 *Ex Parte* contact: Members of the ZBA shall attempt to avoid *Ex Parte* contact about cases where an appeal is before the ZBA. Members of the ZBA have a duty to not pre-judge a case, and to base their decision only on the material and facts presented at public meetings and hearings on the case.

Despite one's best efforts, it is sometimes not possible to avoid *Ex Parte* contact. When that happens, the member should publicly report the content and context of the *Ex Parte* contact in full at the public hearing or meeting on the case prior to the ZBA making a decision on the issue.

ARTICLE V
Officers

- Section 1 Chairperson's duties:
1. Preside at meetings and hearings.
 2. Sign all documents required as a consequence of ZBA activities.
 3. Represent the ZBA between scheduled meetings.
 4. Collect, request, and/or research additional information, and/or request clarification and/or explanation of information, rules, and/or law, as necessary or as requested by the ZBA in order to adequately understand or address any case or matter before the ZBA. All information gathered shall be sent to all members of the ZBA and the Zoning Administrator.
 5. Additional duties as discussed in Robert's Rules of Order as amended.
- Section 2 Vice-Chairperson's duties:
1. Act for and assume all duties of the chairperson when the chairperson is unable to serve,
 2. Additional duties as discussed in Robert's Rules of Order, as amended.
- Section 3 Secretary's duties:
1. Act for and assume all duties of the vice-chairperson when the vice chairperson is unable to serve.
 2. Review the draft minutes from the recording secretary.
 3. Additional duties as discussed in Robert's Rules of Order, as amended.

ARTICLE VI
Election of Officers

- Section 1 Officers shall be nominated at the regular April meeting of the ZBA.
- Section 2 Election shall take place immediately following nominations.
- Section 3 Candidates shall require the support of a majority of ZBA members present and voting.
- Section 4 Officers shall serve for a term of one (1) year, unless sooner removed.
- Section 5 Vacancies shall be filled by election at the next regular meeting of the ZBA following the procedures listed above. However, the term of the elected officer shall end the following April.
- Section 6 If the regular April meeting is cancelled, the nomination and election of officers shall take place at the next regular meeting of the ZBA with the term of office ending the following April.
- Section 7 In situations wherein election of officers is delayed, the previously elected officer's terms shall be extended pending new elections.

ARTICLE VII
Committees

Section 1 The Chairperson may direct any ZBA member, and/or appoint a committee of ZBA members to collect, research, or request clarification of information, rules, law, etc., or to perform site inspections, etc., as deemed necessary or requested by members of the ZBA, in order to adequately understand and address any matter or case before the ZBA. These directives and/or appointments by the Chairperson may be made outside of a regular meeting of the ZBA as deemed necessary by the Chairperson in order to expeditiously gather information prior to a meeting of the ZBA. No ZBA member(s) may perform these functions or act in this capacity without the consent and knowledge of the Chairperson. All information gathered and/or clarified shall be sent to all members of the ZBA and the Zoning Administrator.

This section is not meant in any way to prevent or discourage any ZBA member from visiting sites for the purpose of performing a site inspection. All members of the ZBA are encouraged to visit each site prior to the ZBA meeting to gain an understanding of the request and site characteristics specific to each case.

ARTICLE VIII
Meetings

Section 1 Meetings of the ZBA will be held in compliance with the Michigan Open Meetings Act (P.A. 267 of 1976).

Section 2 Regular meetings of the ZBA shall be held on the last Tuesday of each month at 6:00 p.m., unless otherwise cancelled.

Section 3 After the meeting has been in session for two (2) hours; the Chairperson shall suspend the ZBA's business and evaluate the remaining items on its agenda. The ZBA shall then decide to either finish the current meeting's agenda, continue the meeting on another day (fix the time at which to adjourn), complete some agenda items and continue the meeting on another day to complete other agenda items, or postpone certain agenda items to the next meeting. The motion to recess shall include the time, date, and location that the ZBA will reconvene. If more than eighteen (18) hours will pass before the reconvened ZBA meeting, public notice shall be given in compliance with P.A. 267 of 1976, as amended, (being the Michigan Open Meetings Act M.C.L. 15.261 et seq.). Upon reconvening, a roll call of attendance shall be the first item of business before proceeding with the same agenda. The ZBA shall resume with the same meeting agenda, proceeding at the same point where it left off, without the addition of any agenda items.

Section 4 Special meetings may be called as appropriate by the Chairperson, by majority vote, signed petition of a majority of the members of the ZBA, or by the Zoning Administrator.

Section 5 Agenda

- a. Shall be sent to members no later than seven (7) days prior to a regular meeting.
- b. Shall be sent to members no later than three (3) days prior to a special meeting.
- c. Placing items on the Agenda: Agenda items are to be sent to the Zoning Administrator. The deadline to add items to the agenda shall be seven business

days prior to the next regularly scheduled ZBA meeting.

Section 6 Order of Business:

- a. Call meeting to order
- b. Pledge of Allegiance
- c. Roll call
- d. Approval of Agenda
- e. Approval of minutes
- f. Public Comment on agenda items other than scheduled hearings
- g. Old Business (may include a public hearing – see Article IX)
- h. New Business (may include a public hearing–see Article IX)
- i. Communications/Staff Report/Update
- j. ZBA Member items
- k. Adjournment

Section 7 The case order indicted on the agenda may be adjusted or suspended by a majority of ZBA members present and voting.

Section 8 The ZBA shall not conduct business unless a majority of the regular members of the ZBA are present. (M.C.L. 125.3601 (12)) A quorum shall consist of four (4) of the seven (7) regular members regardless of any vacancies.

Section 9 Motions addressing issues or cases before the ZBA must be written after all related and relevant information has been presented. Motions shall state the reason(s) for granting or denying a variance, upholding or overturning a decision of the Zoning Administrator or Planning Commission, or detail any interpretation made of the ordinance. Motions should state the applicable sections of the ordinance for which a variance is granted or denied or upon which a decision is based. The presiding officer may not make or second motions.

Section 10 Conflict of Interest:

A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself/herself from a vote in which the member has a conflict of interest constitutes malfeasance in office. (M.C.L. 125.3601 (9))

As used here, a conflict of interest shall at a minimum, but not necessarily be limited to, the following:

- a. An immediate family member is involved in any request for which the ZBA is asked to make a decision. “Immediate family member” is defined as the ZBA member’s spouse, the member and member’s spouse’s children (including adopted) and their spouses, step-children and their spouses, grandchildren and their spouses, parents and step-parents, brothers and sisters and their spouses, grandparents, parents in-law, grandparents in-law, or any person residing in the ZBA member’s household.
- b. The ZBA member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant’s company, agency or association.

- c. The ZBA member owns or has a financial interest in neighboring property including any property immediately adjoining the property involved in the request.
- d. The ZBA member's employee or employer is an applicant or has a direct interest in the outcome.
- e. There is a reasonable appearance of a conflict of interest, as determined by the ZBA member declaring such conflict.

The ZBA member declaring a conflict of interest shall state the nature of the conflict, abstain from any discussion or votes relative to the matter that is the subject of the conflict, and must leave the room until the pending case/issue is decided.

Section 11 A member of the ZBA who is also a member of the County Planning Commission or the Board of Commissioners shall not participate in a public hearing or vote on the same matter that the member voted on as a member of the County Planning Commission or Board of Commissioners. However, the member may consider and vote on other unrelated matters involving the same property. (M.C.L. 125.3601 (13))

Section 12 The concurring vote of a majority of the regular members of the ZBA is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the ZBA is required to pass under the Ordinance, or to grant a variance in the Ordinance. (M.C.L. 125.3603 (2)) For these specific motions, voting shall be by roll call with each member's vote recorded in the minutes. Members having cause may abstain. Regardless of the number of ZBA members actually present and voting at the meeting, it shall take a minimum of four (4) votes in the affirmative in order to pass the motions specified above in this section.

All other motions need only a simple majority of members present and voting in favor of the motion.

Section 13 The presiding officer must vote if the ZBA members present and voting are equally divided.

Section 14 The ZBA may utilize closed sessions as appropriate to discuss matters before the ZBA. However, a summary of the discussions taking place will be made public immediately thereafter and a summary of the closed session will be included in the minutes.

Section 15 Meeting Minutes: Pursuant to the Open Meetings Act 15.269 (3), proposed minutes shall be available for public inspection not more than eight (8) business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than five (5) business days after the meeting at which the minutes are approved by the public body.

Section 16 The chairperson shall act as parliamentarian during meetings but may be reversed by appropriate motion supported by a majority vote of the ZBA members present and voting.

Section 17 Robert's Rules of Order as amended shall apply to all meeting procedures that are not specifically addressed by State law, the Ordinance, or by these Bylaws.

ARTICLE IX
Public Hearings

Section 1

- a. The Chairperson will declare a hearing open and state its purpose and case number.
- b. The zoning administrator presents his/her action on the matter and a written copy of the applicant's request.
- c. The applicant – personally or through an agent or lawyer-- may present his/her case, including presenting witnesses. No time limit will be imposed on the applicant.
- d. Members of the public may address the ZBA. All comments are to be made to the Chairperson. The Chairperson may impose a time limit for each speaker.
- e. Correspondence related to this case is read.
- f. Staff comments
- g. ZBA member comments
- h. Anyone may ask the Chairperson questions on presentations or comments given at this hearing. The Chairperson will seek an answer to the question. Answers shall be given to the Chairperson. No discussion, questioning or answering shall take place between any two (2) or more people except between the Chairperson and the individual who has the floor.
- i. Close the hearing. (At this point all public participation ends.)

ARTICLE X
Amendments

- Section 1 These Bylaws may be amended by a two-thirds ($\frac{2}{3}$) majority vote of the ZBA members so long as such amendment does not result in a conflict with state law.
- Section 2 Proposal to amend these Bylaws may be made at a regular meeting of the ZBA. However, the final vote on proposed amendments shall be held over until the next regular meeting of the ZBA.

Adopted: May 29, 2002
Revised: xxxxxxxx, 2009 or 2010
Amended: May 29, 2018