

# Otsego County Planning Commission

Approved Minutes for July 15, 2019

**Call to Order:** 6:00pm by Chairperson Hartmann

Pledge of Allegiance

**Roll Call:**

Present: Mr. Hartmann, Mrs. Jarecki, Mr. Hilgendorf, Mr. Scott, Mr. Caverson, Mr. Bauman, Ms. Corfis

Absent: Mr. Arndt, Mr. Borton, Mr. Brown, Mrs. Norton

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

Public Present: None

**Approval of minutes from:** May 20, 2019

Chairperson Hartmann requested discussion on the minutes.

Motion made by Mr. Bauman to approve minutes as presented; Seconded by Mr. Hilgendorf.

Motion approved unanimously.

**Consent Agenda:** None

**Other:** None

**Public participation for items not on the agenda:** None

**Public Hearing:**

- 1. Section 21.1 - Accessory Buildings –Otsego County Zoning Ordinance –Text amendments  
Proposed language pertaining to building size
  - a. Open Public Hearing
  - b. Applicant Summary
  - c. Public Comment (3 minute limit)
  - d. Close Public Hearing
  - e. Planning Commission Discussion – Motion*

Chairperson Hartmann stated the case before them and opened the public hearing.

*Public hearing opened: 6:02pm*

With no public in attendance, Chairperson Hartmann closed the public hearing.

*Public hearing closed: 6:03pm*

**Advertised Case:**

- Section 21.1 - Accessory Buildings –Otsego County Zoning Ordinance –Text amendments  
Proposed language pertaining to building size*

Chairperson Hartmann stated the text amendments had been discussed at length at June's meeting and requested further comment on the differences.

Mr. Churches stated the amendments to Section 21.1 remained the same as discussed previously except the proposed amendment to limit the height of the sidewall for accessory buildings within five hundred feet (500') of a body of water was tabled and sent back to committee for further discussion.

Chairperson Hartmann requested further explanation from Mr. Mouch.

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Mr. Mouch stated complaints had been received concerning the height of accessory structures inhibiting the view of the lake for neighboring properties; with the added wall height, truss requirements were different and this afforded the ability to allow living space above the accessory building. There were numerous cases where living space was added after the fact without any of the proper permits.

Mr. Scott stated the maximum building height in the County was thirty-five feet (35') for a residence; a two (2) story home could be built and would also block the view but would be allowed on the lake.

Mr. Mouch stated that was correct but an accessory building with a taller wall height would enable a second residence on a single parcel and that was not allowed. A single family residence is a permitted use, a secondary residence is not.

Ms. Corfis questioned the addition of a mother-in-law suite if it lacked either a kitchen or a bathroom.

It was stated that would be considered a guest house and would require a special use permit.

Mr. Mouch stated this was becoming very prevalent; without building, zoning or health department approval, the safety aspect was brought into the picture. These additional living quarters were being discovered after the fact and it becomes a problem stopping it at that point. Preventing two story accessory buildings would eliminate the problem at the source.

Ms. Corfis stated this should possibly be applied County wide as opposed to lakefront properties only.

Mr. Mouch stated the fourteen foot (14') side wall height was chosen because an architectural blueprint would be required on anything taller. An architect, by law has to print out the 'use code' on their drawing. Any use other than what was stated could be upheld in court; the architect's license would be on the line.

Mr. Churches stated second residences were more prevalent in the RR Zoning District; that is why lakefront properties were suggested but applying it elsewhere could definitely be considered at the next committee meeting.

Mr. Mouch also pointed out the proposed amendment included the elimination of a zoning permit for a one story accessory building less than two hundred (200) sq ft. This was based on the Michigan Building Code for consistency; a building permit was not required either.

Chairperson Hartmann requested a committee meeting be set up for further discussion on the subject of accessory building wall height and all Commission members would be invited to attend.

Chairperson Hartmann requested further discussion on the proposed amendment presented; hearing none, requested a motion to recommend. *SEE ATTACHMENT 1*

Motion made by Mr. Scott to recommend the text amendments to Article 21, Section 21.1 Accessory Buildings as presented to the Otsego County Board of Commissioners for their approval; Seconded by Mr. Bauman.

Motion approved unanimously.

## Public Hearing:

### *2. Section 21.26 – Nonconformities – Otsego County Zoning Ordinance – Text amendments*

*Proposed language pertaining to replacement of existing nonconforming structures*

- a. Open Public Hearing*
- b. Applicant Summary*
- c. Public Comment (3 minute limit)*
- d. Close Public Hearing*
- e. Planning Commission Discussion – Motion*

Chairperson Hartmann stated the case before them and opened the public hearing.

*Public hearing opened: 6:15pm*

Chairperson Hartmann requested comment from Land Use.

Mr. Churches stated the proposed amendment basically allowed a nonconforming structure to be rebuilt within the original footprint, whether it had burned down or was demolished for reconstruction. The current language allowed

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reconstruction but only in percentages. He felt the change allowed more transparency as to what was actually being done.

Chairperson Hartmann pointed out the sketch included in the proposed amendment depicting nonconformity, stating he felt it was very well done.

Mr. Churches stated it was included to clarify the existing language for collective interpretation.

Ms. Corfis questioned the sketch and the continuation of the nonconformity stating that on a small lot, continuing the nonconformity could become a hardship on a neighbor.

Mr. Churches read a paragraph from the Michigan Township Association (MTA) Guide to Planning & Zoning relating to nonconformity. *SEE ATTACHMENT 2*

Ms. Corfis stated she understood it was up to interpretation but felt it would still be a burden on a neighboring property owner to allow an addition to a structure at the same nonconformity. If the setback could be met for the addition, it should be required.

Mr. Scott questioned if a structure was destroyed and the foundation removed, could it be rebuilt on the same footprint.

Mr. Churches stated yes.

Mrs. Jarecki questioned if everything had to be completed within eighteen (18) months referring to Section 21.26.5.5.

Mr. Churches stated as long as a zoning permit was submitted and approved, the project could move forward with building.

Mr. Mouch stated after a year, a building permit renewal could be requested and granted for continued work.

Ms. Boyak-Wohlfeil stated an approved zoning permit was valid for a year from the date of issuance.

Mr. Hilgendorf stated the language was reviewed by the County Attorney and he did not voice objections to it.

Ms. Corfis stated Mr. Kazim had indicated they had a choice to allow nonconformity to continue or be eliminated. She wasn't sure this coincided with the Master Plan in regards to lake views and the greenbelt area put in place to protect the lake. She stated that it was Otsego Lake Township's opinion that if the room existed and the structure could be moved to meet the setbacks, it should. If there was a valid reason why a setback could not be met, then it should be brought before the Zoning Board of Appeals (ZBA) for a variance; that was the purpose of the ZBA.

Mr. Caverson stated nonconformities were included in the Ordinance to protect structures and uses that existed prior to zoning. Zoning laws can't just be enacted with total disregard to what was already in place; there were legal reasons why these were allowed to continue.

Ms. Corfis stated Mr. Kazim said they had the option; they could continue with the nonconformity or become more conforming.

Mr. Bauman stated the option meant you could make it more conforming but you did not have to. Not allowing the nonconformity to continue meant more dilapidated structures in the County.

Mr. Scott stated most of these original lakefront structures were setback approximately the same distance from the water so demanding one person set his back further because it happened to be destroyed was unfair. He would lose his view and this could possibly cause hardship with the location of the well and septic. On a smaller lot, they may have to be relocated and there may not be room to do so not to mention the added costs.

Ms. Corfis stated there were extremes on both sides; she also pointed out that one of the supporting reasons included in the summary was the potential to increase taxable value; zoning should be based on health, safety and welfare and not on potential receipts to the government.

Chairperson Hartmann stated that was included as research to show the percentage of properties that were nonconforming and the percentage of tax base involved.

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Mr. Churches stated it was included to show the percentage of constituents that lived on these properties and what a high impact this proposal would have on them whether it passed or not. It would allow them to update their properties instead of having them continue living in a dilapidated structure because they had no choice.

Ms. Corfis stated zoning should focus on the health, safety and welfare of the County.

Chairperson Hartmann closed the public hearing.

*Public hearing closed: 6:35pm*

## **Advertised Case:**

*2. Section 21.26 – Nonconformities – Otsego County Zoning Ordinance – Text amendments  
Proposed language pertaining to replacement of existing nonconforming structures*

Chairperson Hartmann requested further discussion; hearing none, requested a motion to recommend. *SEE ATTACHMENT 3*

Motion made by Mr. Hilgendorf to recommend the text amendments to Article 21, Section 21.26 Nonconformities as presented to the Otsego County Board of Commissioners for their approval; Seconded by Mr. Scott.

Motion approved unanimously.

**Unfinished Commission Business:** None

## **New Business:**

Chairperson Hartmann stated Mr. Arndt would be stepping down from the Planning Commission and an application had been received for Bagley's recommended member, Peter Maxwell. He reviewed the application and made the following motion for recommendation to the Board of Commissioners:

Motion made by Mr. Hartmann to recommend the appointment of Peter Maxwell to the Otsego County Planning Commission as Bagley Township's representative for approval by the Otsego County Board of Commissioners; Seconded by Mr. Caverson.

Motion approved unanimously.

## **Reports and Commission Member's Comments:**

### 1. Otsego County Parks & Recreation report/Judy Jarecki

Mrs. Jarecki stated the Fourth of July holiday was a success, the County Park was full –the agreement between Otsego Lake Association and Johannesburg was up for discussion, it was in place to avoid firework displays on the same night – Chuck's Electric was awarded the bid for the electrical upgrade at the Park; a new employee was hired at the Groen – the Ranger Station is complete and came in under bid – the new entrance to the Groen is still under construction awaiting the gate installation; the baseball diamond at Libke Field had been resurfaced with the help of grant money but now the fencing and backstop needed upgrades – grant money would be sought.

### 2. Land Use Services report

*Chris Churches: Pines 45 Gaylord Apartment Project*

Mr. Churches stated the County had met with the City of Gaylord and was asked to brief the Planning Commission on an apartment complex planned for construction on the south side of the Otsego Club along M-32. The property is destined to be annexed into the City after the completion of two hundred twenty-eight (228) apartments within seven (7) buildings; a playground area is planned along with a dog park, pool and community building. Once Bagley Township signs the annexation agreement, the property will be outside of County Zoning. This complex will be the largest taxpayer in the City.

### *Master Plan*

Chairperson Hartmann stated it was required the Master Plan be reviewed every five (5) years; the adopted date of the current Master Plan was 2015. After meeting with Mr. Churches and Mrs. Frisch, Otsego County Administrator, it was decided that any major revisions would be postponed until the 2020 census data was received since much of the

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data was statistics. The Plan would be updated now for any possible clerical errors as well as some of the maps for clarity. The Plan could be revised anytime within the five years.

Mr. Hilgendorf questioned the Big Lot signage around the County.

Mr. Churches stated it would be looked into.

Ms. Corfis stated she would be contacting Land Use to discuss the cemetery in Otsego Lake Township and how it could be made more conforming with the Zoning Ordinance

With nothing further, Chairperson Hartmann adjourned the meeting.

**Adjournment:** 6:55pm by Chairperson Hartmann

Ken Arndt; Secretary

Christine Boyak-Wohlfeil; Recording Secretary

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## ATTACHMENT 1:

### Proposed Language:

#### SECTION 21.1 ACCESSORY BUILDINGS

- 21.1.1 Accessory buildings in the [R1](#), [R2](#), [R3](#) & [RR](#) Districts shall be subject to the side and front yard setback requirements as regulated in [Article 17 SCHEDULE OF DIMENSIONS](#), but need not be farther than ten (10) feet from the rear property line.
- 21.1.2 In residential districts all accessory buildings and uses shall be in the rear yard except in the case of one detached private garage which may be allowed in the side or front yard, provided it maintains the setback requirements as regulated in [Article 17 SCHEDULE OF DIMENSIONS](#).
- 21.1.3 Accessory buildings two hundred (200) square feet or less do not require a zoning permit. Such buildings must maintain the setback requirements defined in [Article 17 SCHEDULE OF DIMENSIONS](#). ~~Detached accessory buildings for residential use in any district shall not exceed a total ground floor area of: twelve hundred (1,200) square feet in [R1](#), [R2](#) and [RR](#), and two thousand (2,000) square feet in [R3](#), [FR](#) and [AR](#), except:~~
- ~~21.1.3.1 Where the lot is larger than the minimum size for that zoning district, the total accessory building square footage may be increased proportionally to the lot size in the following manner: twenty five (25) square feet increase in allowable accessory buildings for every one thousand (1,000) square feet that the lot exceeds minimum lot size, up to a maximum of four thousand (4,000) square feet.~~
- 21.1.4 Agricultural buildings and structures incident to use for agricultural purposes are exempt from accessory building requirements.
- 21.1.5 Accessory buildings shall not be used for residences.
- 21.1.6 Accessory buildings may not be used for commercial storage. Accessory structures incident to a permitted or special use in the zoning district which it is located are permitted (for example, an accessory building for the storage of golf carts would be allowed on an approved golf course in a [RR](#) District).

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ATTACHMENT 2:

## MICHIGAN TOWNSHIP ASSOCIATION GUIDE TO PLANNING & ZONING

*(Excerpt)*

### **Zoning ordinance provisions for nonconformities**

...

- *Enlarging/expanding nonconforming buildings or uses* – Most ordinances will not permit a nonconforming building to increase its nonconformity. For example, a building that has a nonconforming side yard would not be permitted to build an addition that would bring the building even closer to the side lot line (unless a variance was granted by the zoning board of appeals, in which case nonconforming regulations would no longer apply).

However, the township may allow nonconforming buildings to expand, as long as the nonconformity is not increased. Approval is normally granted by the ZBA, based on certain requirements and standards....

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ATTACHMENT 3:

*Proposed Language:*

## 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~~ **allow new nonconformities**. ~~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.

### 21.26.3 NONCONFORMING USE OF LAND

Nonconforming uses of land may be continued, so long as they remain otherwise lawful, subject to the following provisions:

21.26.3.1 No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.

### 21.26.4 NONCONFORMING STRUCTURE

Nonconforming structures may be continued so long as they remain otherwise lawful, subject to the following provisions:

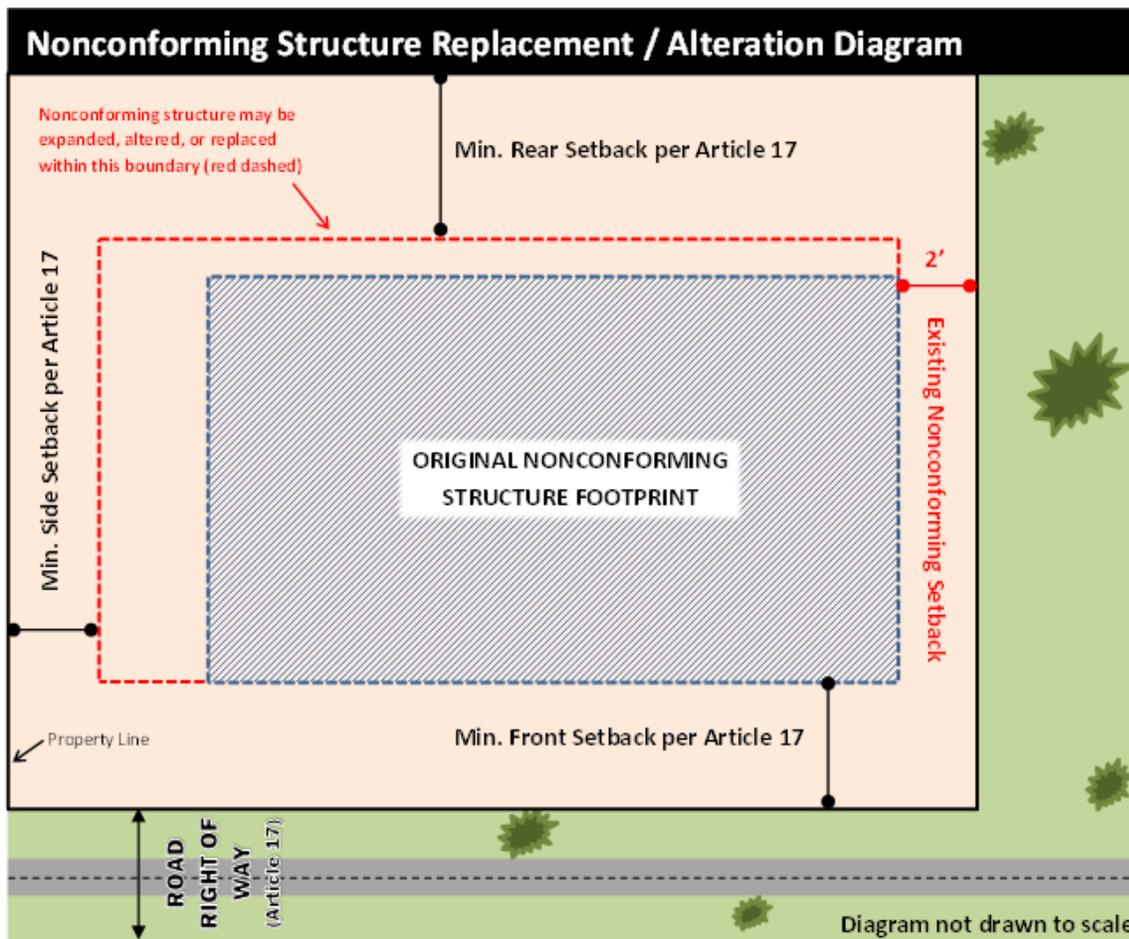
21.26.4.1 No nonconforming structure may be enlarged or altered in a way which increases its nonconformity. Such structures may be enlarged or altered in a way which does not increase its nonconformity.

21.26.4.2 ~~Should such structure be destroyed by any means to an extent of more than sixty (60) percent of its volume or floor area, exclusive of the foundation, or basement, it shall be reconstructed only in conformity with the provisions of this Ordinance.~~ **A nonconforming structure may be restored, rebuilt, repaired, or replaced provided it utilizes the footprint of the original structure. Enlargements or alterations to the original structure's footprint may be made pursuant to section 21.26.4.1.**

21.26.4.3 Should such structure be moved for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is removed.

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## 21.26.5 NONCONFORMING USES OF STRUCTURES AND LAND

Nonconforming uses of structures and land may be continued so long as they remain otherwise lawful, subject to the following provisions:

- 21.26.5.1 No such nonconforming use of land or building shall be moved in whole or in part to any other portion of the lot or parcel occupied, other than to remove or lessen nonconforming conditions.
- 21.26.5.2 Any nonconforming use may be carried on throughout any parts of a building which were manifestly arranged or designed for such use, but no such use shall be extended to occupy any land outside such building.
- 21.26.5.3 Any nonconforming use of a structure, land, or structure and land, may be changed to another nonconforming use provided that the other use is equally or more appropriate to the district than the existing nonconforming use.
- 21.26.5.4 Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed. A change in tenancy and ownership of nonconforming premises is permissible.
- 21.26.5.5 When a nonconforming use of structure, land, or structure and land in combination, is discontinued or ceases to exist for eighteen (18) consecutive months, the use, structure, or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located.
- 21.26.5.6 Removal or destruction of the use and/or structure shall eliminate the nonconforming status.

## 21.26.6 REPAIR AND MAINTENANCE

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.

## 21.26.7 SPECIAL LAND USE IS NOT A NONCONFORMING USE

Any use for which a special use permit is issued as provided in this Ordinance shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.