



**VILLAGE OF SUTTONS BAY**  
Planning Commission  
420 N. Front Street, Suttons Bay, MI 49682  
**June 12, 2024 at 5:00 pm**  
**Regular Meeting Agenda**

1. Call to order
2. Roll call and notation of quorum
3. Approval of Agenda
4. Member conflict of interest on any item on the agenda
5. Approval of minutes May 8, 2024
6. Public comment/Written communications (Reserved time for items listed on the agenda). Please limit remarks to no more than three (3) minutes
7. Unfinished Business
  - a. Wetland Ordinance Language-Continued Discussion
8. New Business
  - a. Zoning Ordinance Amendment Request
  - b. Housekeeping/Zoning Ordinance Amendment Discussion
9. Public comment
10. Reports
  - a. Zoning Administration Report
  - b. ZBA Report
  - c. Village Council Updates
11. Good of the order
12. Announcements: Next Regular Meeting July 10, 2024
13. Adjournment

If you are planning on attending this meeting and are disabled requiring any special assistance, please notify the Village Clerk by calling 231.271.3051 or by email at [suttonsbay@suttonsbayvillage.org](mailto:suttonsbay@suttonsbayvillage.org) as soon as possible.



VILLAGE OF SUTTONS BAY  
PLANNING COMMISSION  
Meeting Minutes of May 8, 2024  
420 N. Front Street  
Suttons Bay, MI 49682

The meeting was called to order at 5:00 p.m. by Chairperson Hetler.

Present: Feringa, Hetler, Hylwa, Pontius, Smith, and Suppes  
Staff present: Fay, Patmore and Kopriva  
Guests: Dusty Christensen, Land Use Consultant representing Bahle Enterprises, LLC

#### Approval of Agenda

Smith moved, Hylwa seconded, CARRIED, to approve the agenda as presented.  
Ayes: 6, No: 0.

#### Approval of Minutes

Feringa moved, Hylwa seconded, CARRIED, to approve the Planning Commission meeting minutes of January 10, 2024. Ayes: 6, No: 0.

#### Public Comment/Written Communications

Written public comment received from The Watershed Center in support of the proposed Wetland Ordinance.

#### Wetland Ordinance Language

Kopriva referred to her report dated May 8, 2024, found in the packet. Feringa asked how the setbacks are determined and suggested using the term delineated instead of regulated. A better definition for Wetlands was also requested. Kopriva will make changes based on Commissioners comments for the next meeting, and will review the Watershed Center correspondence as well.

#### Zoning Ordinance Amendment Request

An application of an amendment to the Single-Family Waterfront Residential (SFWR) zoning district was received from applicants Bahle Properties, LLC. The amendment proposes to change the intent section and reduce the spatial (setbacks and minimum lot) requirements in the SFWR district. Below are changes requested in brief:

1. Remove minimum lot depth
2. Reduce minimum width/frontage from 100 feet to 90 feet

3. Reduce street setback from 25 feet to 20 feet
4. Change intent from "larger lots at lowest density, close to half-acre minimum lot size to "on waterfront lots"

Dusty Christensen, representative for Bahle's Enterprises, reiterated what was in his report found in the packet and addressed Commissioners questions and concerns. Commissioners requested from Kopriva the following additional information for the next Planning Commission meeting:

- Check for other parcels that are situated in two districts such as the parcels discussed today.
- Details regarding impervious surfaces.
- Implications/impacts if the standard for a minimum lot depth is eliminated, and how this could affect other parcels and zoning districts who may want to follow this precedence if granted, positive or negative.
- Is the request in line with the Master Plan?

It was the consensus of Commissioners to place this back on the agenda for next month's meeting. Hetler requested Commissioners to bring their Zoning Ordinance and Master Plan to the next meeting.

#### Housekeeping/Zoning Ordinance Amendment Discussion

Kopriva stated she will be presenting to the Planning Commission some zoning amendments for consideration, such as amendments in the Bayview District, Telecommunications Towers updates for compliance, and other sections of the Zoning Ordinance to update legal components and address some cross references.

#### Reports

##### Zoning Administration Report

The Zoning Administration report was submitted and can be found in this packet. Patmore stated that things have picked up. He just issued a permit for a new dwelling, and other permits as well as fielded lots of phone calls.

#### Good of the Order

Hetler encouraged Commissioners to read meeting minutes found on the Village website. She further thanked Commissioners for their participation and readiness. She stated the Planning Commission is still looking for a 7<sup>th</sup> member.

The meeting adjourned at 6:20 p.m.

Meeting minutes submitted by Shar Fay, Clerk.

Date: 06.10.2024  
From: Sara Kopriva, AICP  
To: Village of Suttons Bay Planning Commission  
Project: Wetlands Amendment

  
initiative

At the May meeting, the Planning Commission began discussion of a zoning amendment for wetlands. During discussion of the amendment, the desire for a new definition was requested.

Upon review of the State of Michigan definition from the Natural Resources and Environmental Protection Act, the Village's definition is very similar to the State definition and are included below. The only addition that I would suggest is to reference the State definition in the Village definition to clarify where it comes from. This could be in the form of "as defined in the Natural Resources and Environment Protection Act, as amended,..."

Village Ordinance:

**WETLAND** means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support wetland vegetation or aquatic life.

State of Michigan:

Wetland: land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh.

Below (highlighted in yellow) is proposed language for setbacks to wetlands. Following review, the Planning Commission can determine if they would like to schedule a public hearing on the language.

Beckett & Raeder, Inc.  
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5211 Cascade Road SE  
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Grand Rapids, MI 49546

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Notwithstanding anything to the contrary contained in this ordinance, the following provisions shall apply:

*G. Wetland Protection.*

1. Within 10 feet of a delineated wetland, an undisturbed area of vegetation shall be maintained and woody and native herbal species shall not be removed. Trees with a trunk diameter of three (3) inches at breast height, four and a half (4 ½) feet or greater, shall not be removed unless dead or dying. Trees and other woody plant material of a smaller diameter at breast height shall not be removed.

2. Regulated Wetlands

An applicant planning to make any improvements or changes to a regulated wetland within the district must obtain a permit from EGLE, or successor agency, in accordance with Part 303 (Wetlands Protection) of the Natural Resources and Environmental Protection Act, 1994 PA 451 prior to submitting a site plan or land use permit application under this Zoning Ordinance.

3. Wetland Setbacks

For a regulated wetland, or for an unregulated wetland area which otherwise meets the criteria to be designated as a wetland, no structure or parking lot shall be constructed within twenty-five (25) feet of such wetland. However, recognized wetlands may be incorporated into a stormwater management strategy provided that the wetland values will not be impaired and provided further that incorporation of the wetland will provide a net ecological benefit to groundwater and surface water.



initiative

Date: 06.10.2024  
From: Sara Kopriva, AICP  
To: Village of Suttons Bay Planning Commission  
Project: Amd 24-01 SFWR District Regulations

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*i*  
initiative

Next Steps: Motion to schedule a public hearing

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At the May Planning Commission meeting, the Planning Commission began review of the requested zoning amendment. During the discussion, additional questions were asked about the zoning district requirements. Included is language from the current Master Plan as well as additional details on the existing parcels with the Waterfront Residential zoning district.

The single family waterfront residential (SFWR) district is included in the Shoreline Residential future land use district in the Master Plan. Below is the language that describes the Shoreline Residential district from page 34.

### Shoreline Residential

The Shoreline Residential category includes residential developments that occur along shorelines. These developments incorporate techniques which help minimize the potential negative environmental and aesthetic impacts on the water resource. For example, shoreline buffers that help prevent erosion and filter storm water run-off is an encouraged design feature of new residential developments. In addition, developments that provide visual access to the water, pedestrian paths, public parks, and open space are preferred over developments that "wall off" the community from the water resource.

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**Statistic from existing parcels**

- 48 parcels were analyzed along the water in the southern section of the Village (SW Bay Shore Dr & Shore Dr)
- 16 parcels are split by a road in some manner (parcel size .55 ac to 5.71 ac)
  
- 10 parcels would be allowed the minimum of 2,500 sq ft for lot coverage. (30% lot coverage based on their lot size would be less than 2,500 sq ft)

	Acreage	Water Setback	Road Setback	Lot Width at Road	Lot Width at Water	Depth of Property
Average	.72	71	59	139	125	213
High	5.71	328	226	1022	493	1020
Low	.07	15	21	31	21	72
Most Frequent	.41 (3 parcels)	150 (3 parcels)	37 (4 parcels)	106 (4 parcels)	97 (3 parcels)	136 (3 parcels)

Again, this is an application of an amendment to the Single Family Waterfront Residential (SFWR) zoning district has been received by the Village. This is similar to an amendment request that the Village received in 2019 and determined to take no action on. Minutes and report were attached to previous packets.

This amendment proposes to change the intent section and reduce the spatial (setbacks and minimum lot) requirements in the SFWR district. The applicants complete report is attached, below are the changes in brief.

1. Remove minimum lot depth
2. Reduce minimum width/frontage from 100 ft to 90 ft
3. Reduce street setback from 25 ft to 20 ft
4. Change intent from "larger lots at lowest density...close to half-acre minimum lot size" to "on waterfront lots"

Below is the criteria for evaluating a zoning amendment from the Zoning Ordinance. Following initial review by the PC, a public hearing is required.

**Section 18-3 Zoning Ordinance Amendments**

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*C. Criteria for Text Amendments.* The following guidelines shall be used by the Planning Commission, and may be used by the Village Council, in consideration of amendments to the Zoning Map:



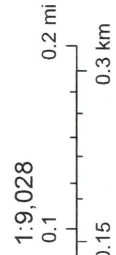
1. The proposed text amendment would clarify the intent of the ordinance.
2. The proposed text amendment would correct an error or oversight in the ordinance.
3. The proposed text amendment would address changes to the State legislation, recent case law or opinions from the Attorney General of the State of Michigan.
4. The proposed text amendment would promote compliance with changes in other County, State or Federal regulations.
5. In the event the amendment will add a use to a district, that use shall be fully consistent with the intent of the district and the character of the range of uses provided for within the district.
6. The amendment will not create incompatible land uses within a zoning district, or between adjacent districts.
7. The proposed text amendment is supported by the findings of reports, studies, or other documentation on functional requirements, contemporary building practices, environmental requirements and similar technical items.
8. As applicable, the proposed change shall be consistent with the Village's ability to provide adequate public facilities and services.
9. The proposed change shall be consistent with the Village's desire to protect the public health, safety, and welfare of the community.









# Leelanau Parcel Viewer



6/10/2024, 1:25:08 PM



-  Roads
-  Municipalities
-  Sections
-  Subdivisions & Condos
-  Government Lots
-  Tax Parcels

Esri Community Maps Contributors, GTC OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, Equalization/GIS, ©

This map is prepared by Leelanau County for reference purposes only. Leelanau County is not liable for any errors that may be found in this map.

January 25, 2024

Sara Kopriva, Zoning Administrator  
Village of Suttons Bay  
PO Box 395  
Suttons Bay, MI 49682

**Re: Zoning Ordinance Amendment Request**

Ms. Kopriva,

On behalf of the applicant, Bahle Properties, LLC, the following represents proposed amendments to the language of the Suttons Bay Village Zoning Ordinance (Ordinance) for the consideration of the Planning Commission and Village Council. The proposed amendments are intended to reduce the prevalence of nonconforming lots within the Single-Family Waterfront Residential (SFWR) zoning district and limit the need for variances related to dimensional standards in the zoning district. Specific Ordinance language referenced below is shown in *italic text*, text to be removed shown in ~~strikethrough~~, and with proposed language shown in ***bold italic text***.

Section 4-1 Intent and Purpose

Update intent language to reflect proposed changes to dimensional standards in the SFWR zoning district.

*C. Single-Family Waterfront Residential (SFWR). The SFWR district accommodates single-family detached development **on waterfront lots within the Village.** ~~on larger lots at the lowest density of the Zoning Ordinance, close to a half-acre minimum lot size.~~*

Section 4-3 Spatial Requirements

Modify Table 4-3 as shown on the following page to change dimensional standards in the SFWR district.

Table 4-3 Spatial Requirements - Residential Districts

Residential Districts	Min. Depth (ft.)	Min. Width/Frontage	Setbacks (feet)					Height of Primary (feet)	Stories	Building Coverage	Max. Impervious Coverage
			Primary Street Front	Side Street Front	Side	Rear/Alley	Lake Michigan				
CR	100	40/40	15-25 <sup>1</sup>	6 <sup>2</sup>	6	10	-	30	2.5	40%	50%
NVR	100	80/40	15	15	15	15	-	30	2.5	30%	40%
SFWR	200	<del>100/100</del> 90/90	25	20	25	15	50	30 (street) 40 (lowest grade)	2.5	Greater of 30% or 2,500 SF	Greater of 30% or 2,500 SF
HR	100	100/20	40	40	40	40	-	30, 40 for dwellings with walk out basement	2.5	Lesser of 40% or 8,000 SF	Lesser of 50% or 10,000 SF
WC	150	200/200	35	35	Lesser of 35 or height of bldg.		50	35	2.5	0.25	0.4

<sup>1</sup> For the CR district, the minimum setback is 15 feet and the maximum setback is 25 feet.

<sup>2</sup> The six (6) foot Secondary Street Front Setback is only applicable to the side of dwellings on corner lots. For instance, setbacks from Madison, Jefferson, Park, Adams, Grove, and Concord Streets may only be six (6) if the home faces the other street (Broadway, Lincoln, St. Mary's, Race, and Stratton). If facing the secondary street, two primary street front setbacks shall apply.

It should also be noted that the proposed amendments to Table 4-3 will necessitate changes to Figure 4-2 to illustrate the proposed changes to dimensional standards.

### Proposed Amendments – Narrative and Discussion

Members of the Planning Commission may recall that a similar Ordinance amendment request was made for the SFWR district in 2019. That proposed amendment was contemplated by the Planning Commission for over one year and resulted in multiple Village staff reports (Reports VSB-2020-10, VSB-2020-42, and VSB-2020-52) outlining several potential options for the Planning Commission to consider. Ultimately, the Planning Commission decided to take no action on the amendments proposed at that time.

In the time following this 2020 decision, the applicant has reassessed their options related to properties that they own within the SFWR zoning district and determined that a modified Ordinance amendment request would be the best course of action to meet their specific objectives while also addressing demonstrated issues within the current Ordinance. The applicants own two parcels with water frontage that are divided by existing road rights-of-way and have split zoning. The waterfront portions of these parcels (zoned SFWR) are similar in size to a majority of the lots that currently exist within the SFWR district, but can't be split from the parent parcels due to the current dimensional standards within the Zoning Ordinance. Adoption of the proposed Ordinance

amendments would benefit the applicant by making these potential lot splits viable, and also benefit the Village by reducing nonconformities on a large portion of the lots within the SFWR district.

#### Nonconformity and Dimensional Variances

As discussed previously in this document and in Village Report VSB-2020-10, changes to the Village Zoning Ordinance made in 1974, 1991, 2006, and 2018 have created a situation where a large portion of the parcels within the SFWR district do not conform to relevant dimensional standards. General best practices for community planning discourage zoning amendments that increase nonconformity, primarily to prevent the need for variance requests as part of the completion of standard, allowed development and construction. A variance is essentially a license to violate a specific Ordinance standard or regulation and improper or overuse of the variance process can undermine the integrity of an entire zoning ordinance. The *Michigan Zoning Guidebook for Citizens and Local Officials*, by Mark Wyckoff, FAICP, notes that “When a zoning board of appeals considers a variance, it is important that the board keep in mind that the variance authority is designed to provide relief to a property owner from an ordinance requirement that is uniquely affecting that property owner.” (emphasis added) When ordinance regulation changes result in a large percentage of nonconforming parcels within a zoning district, those regulations are no longer unique as they impact many pieces of property and become common. Wyckoff continues to state that when considering variances “If the ZBA finds that the problem is not unique, but common, amending the ordinance or a rezoning should be pursued by the applicant.” The applicants have attempted to initiate such amendments/rezoning with previous requests and continue to feel that this option best serves their needs, the owners of lots within SFWR district, and the Village.

#### Minimum Lot Depth

It is proposed that the Ordinance be amended to remove the minimum lot depth within the SFWR district. The current minimum lot depth permitted for lots within the SFWR district is 200’ which, according to rough measurements completed by Mansfield Land Use Consultants, only four (4) SFWR parcels meet. This represents only 9.3% of the 43 lots measured in the district. Due to the SFWR district including only lots along the water being served by existing streets, physical lot depths for these properties are essentially predetermined, making this standard unnecessary. It is recognized that minimum lot depth is used by the Ordinance (in conjunction with minimum lot widths) to define minimum lot sizes within all zoning districts, but the objectives of the SFWR district can be, and are, met through other dimensional standards such as maximum lot coverage and maximum impervious surface coverage. Eliminating the minimum lot depth requirement within the SFWR district would reduce nonconformity within the district and is made feasible by the existence of municipal water and sewer service in the Village.

Existing aesthetic character within the district varies, but much of the area is characterized by small cottages on narrow lots, with many existing parcels measuring at less than 80’ in width. Parcels of such small sizes can still meet water quality protection and character objectives of the SFWR district by complying with existing minimum lot coverage standards – i.e. the smaller a lot is, the smaller an

allowed structure must be, helping to maintain the small-scale residential character of the area while still allowing for the construction of new structures and additions where permitted.

The Ordinance currently prescribes an almost half acre minimum lot size (through minimum lot width and depth standards) for SFWR lots, which only 13 lots (30.2% of total) currently meet. Village Report VSB-2020-10 notes that this lot size is relatively large for Village residential areas served by municipal sewer and water, which lots in the SFWR district are.

#### Minimum Lot Width

Zoning Ordinance dimensional requirement changes adopted in 2006 (and carried through the 2018 Ordinance rewrite) were noted in Village Report VSB-2020-10 as increasing nonconformity within the SFWR district, contradicting the stated intent of the Village at the time to reduce nonconformity. Reducing the required minimum lot width in the SFWR district to 90' helps bring more of the district's lots into conformity with Ordinance standards, while, in conjunction with maximum lot coverage and side setback standards, maintains the general existing residential character of the area. Village Report VSB-2020-10 also notes that "...our dimensional standards appear restrictive considering they are serviced by sewer and water." The applicant's hope is that the Planning Commission and Village Council will recognize that the nonconformities created by the changes in the Ordinance's dimensional standards over past decades have limited flexibility for property owners and increased nonconformity within the SFWR district. The proposed reduction in minimum lot width seeks to strike a middle ground between the current minimum lot width (100') and the minimum lot width prescribed by the 1974 Village Ordinance (80').

#### Primary Street Front Setback

Due to the generally shallow lot depths present in the SFWR district, the current 50' water setback and 25' primary street front setback render many existing structures noncompliant and significantly reduce potential buildable area on undeveloped lots. This results in a situation where a large portion of the properties within the SFWR district would require variances from the dimensional standards of the Ordinance in order to complete even minor modifications to existing structures. (See earlier portion of this document for additional information on dimensional variances) In preparation of this amendment request, existing front setbacks of existing structures in the SFWR district were measured to the degree possible utilizing County GIS property data and aerial photography. Due to the limitations of the data used for measurement existing front setbacks were able to be measured for 33 SFWR lots. Setback measurements indicate that only 18 of the 33 lots examined (54.5%) meet current front setback standards. The proposed 20' front setback is intended to provide additional conformity within the district (21, or 63.6%, of measured lots would comply) and increase buildable area on lots following increases in water setbacks while maintaining the aesthetic character intended by the inclusion of the front setback within the Ordinance.

#### Criteria for Ordinance Text Amendments

The following portion of this document offers responses and justification for the proposed Ordinance amendments relating to the criteria for ordinance text amendments listed in Section 18-

3 of the Zoning Ordinance. Ordinance criteria is shown in *italic text* and responses are shown in regular text.

*C. Criteria for Text Amendments. The following guidelines shall be used by the Planning Commission, and may be used by the Village Council, in consideration of amendments to the Zoning Map:*

1. *The proposed text amendment would clarify the intent of the ordinance.*  
The proposed amendments offer slight modification to the SFWR district intent passage and would help to increase conformity of the few undeveloped parcels within the zoning district, allowing for accomplishing the intent to provide for single-family residential development in the district.
2. *The proposed text amendment would correct an error or oversight in the ordinance.*  
The proposed amendments would help correct errors or oversights made during past changes to the SFWR district, as identified in Village Report VSB-2020-10. As previously discussed in this document, prior changes were intended to decrease nonconformity within the SFWR district, but actually increased levels of nonconformity.
3. *The proposed text amendment would address changes to the State legislation, recent case law or opinions from the Attorney General of the State of Michigan.*  
There are no recent changes to State legislation, case law, or Attorney General opinions that are relevant to this request.
4. *The proposed text amendment would promote compliance with changes in other County, State or Federal regulations.*  
There are no known changes to County, State, or Federal regulations that the proposed amendments would promote compliance with.
5. *In the event the amendment will add a use to a district, that use shall be fully consistent with the intent of the district and the character of the range of uses provided for within the district.*  
No new uses are proposed within the SFWR district as part of this amendment request.
6. *The amendment will not create incompatible land uses within a zoning district, or between adjacent uses.*  
As there are no new uses proposed, the amendment will not create incompatible land uses within the zoning district.
7. *The proposed text amendment is supported by the findings of reports, studies, or other documentation on functional requirements, contemporary building practices, environmental requirements, and similar technical items.*

As previously mentioned in this document, the proposed amendments are supported by the previously completed Village Report VSB-2020-10 and the recommended best planning and zoning practices outlined in the *Michigan Zoning Guidebook for Citizens and Local Officials* by Mark Wyckoff.

8. *As applicable, the proposed change shall be consistent with the Village's ability to provide adequate public facilities and services.*

As the SFWR district is served by existing infrastructure (roads, utilities, etc.), the proposed amendments do not place an undue burden on the Village's ability to provide adequate public facilities and services.

9. *The proposed change shall be consistent with the Village's desire to protect the public health, safety, and welfare of the community.*

The proposed amendments do not contemplate changes that impact the protection of the public health, safety, and welfare of the community. No new, conflicting land uses are proposed within the amendment and the proposed changes would not result in development that substantially differs from the existing conditions and character within the SFWR zoning district. Additionally, other Zoning Ordinance and regulatory agency regulations remain in place to protect human and environmental safety in the district.


The applicants and I look forward to discussing this proposal with you and the Planning Commission at an upcoming meeting and feel that the proposed amendment language will benefit not only the applicant, but the Village as a whole.

Should you have any questions, please feel free to call me at (231) 946-9310 or email me at [dusty@maaeps.com](mailto:dusty@maaeps.com).

Sincerely,  
Mansfield Land Use Consultants



Dusty Christensen, LLA

		<b>VILLAGE OF SUTTONS BAY</b> REPORT VSB -2020-10	
Prepared:	February 6, 2020	Pages:	1 of 4
Meeting:	February 12, 2020 Planning Commission	Attachments:	<input type="checkbox"/>
Subject:	Lakefront Lot Summary		

PURPOSE

The Planning Commission requested that Staff perform a Lakefront Lot Dimensional study as identified in Report VSB-2019-79. There were several variables to consider in determining how the new zoning ordinance standards came to be and how the current standards best fit the Village. The intent of this report is to provide a brief summary of our findings.

BACKGROUND

The Village adopted its first "official" Zoning Ordinance in 1974, officially repealing the Interim Zoning Ordinance adopted in 1970. The dimensional lot standards were essentially the same as those in the interim ordinance therefore, we did not incorporate those standards into the study. The chart below, identifies various dimensional standards and how they have evolved over the last 45 years along the Villages waterfront district.

TABLE 1 – Lakefront Lot Dimensional Standards

Year	Lakefront District	Minimum Lot Area (SF)	Minimum Lot Width	Maximum Lot Depth	Front Yard Setback	Side Yard Setback	Rear Yard Setback	Waterfront Setback
1974	MDR	9,600	80	N/A	30	10	30	30
1991	MDR	10,000	40	N/A	35	15	40	40
2006	SFW	20,000	100	200	25	15	50	50
2018	SFW	20,000	100	200	25	15	50	50

In reviewing Table 1, it appears that the Village created numerous nonconformities with the adoption of the 1974 ordinance, and looked to correct that mistake in 1991 by reducing the minimum lot width by 40 feet. An increase in setbacks was likely to offset or lessen the burden on neighboring properties and/or to ensure emergency services were taken into consideration.

Interestingly, the change in dimensional zoning standards from 1991 to 2006 was contrary to the statements made by the planning commission who correctly felt "....that the purpose of the Rewrite was to bring everything into conformity; to create less non-conforming uses." This was not the result, rather, the zoning change produced an increase in non-conformities along the lakefront making it more difficult to improve or expand a resident's structure. The dimensional standards were then transferred to the 2018 Ordinance.

agenda - no ePacket



PLANNING COMMISSION

STAFF COMMENT

The information provided in Table #1 shows the progression of the minimum lot area required to create a new parcel. Although the increase in size from 1991 to 2006 is substantial the size itself is not that uncommon. The 20,000sf lot area is common along lakeshores and residential single-family districts in this region however they typically lack water and sewer services. Due to the number of non-conformities formed during the change there may be an opportunity to adjust the standards to benefit current land owners.

WATERFRONT REGULATIONS

Single-family residentially zoned properties vary from community to community. Although there are underlying reasons for the size difference there are typically only a handful of variables that dictate residential lot sizes along waterfront properties. For comparison purposes, we researched lakefront communities that permitted single family residential along their shorelines and compared them below.

TABLE 2 – Lakefront Dimensional Standards

Municipality	Lot Area	Minimum Lot Depth	Lot Width	Front Yard Setback	Side Yard Setback	Rear Yard Setback	Waterfront Setback
Bingham Twp.	43,560	N/A	150	40	10	30	30/40
Centerville Twp	22,000	N/A	100	40	10	15	15
Cleveland Twp	30,000	N/A	150	40	10	10	75
Elmwood Twp	12,500	N/A	100	30	10	25	30
Empire	30,000	N/A	100	40	10	10	N/A
Glen Arbor	15,000	N/A	100			15	40
Leland	15,000	N/A	100	40	10	25	N/A
Suttons Bay Township	43,560	N/A	150	40	10	30	50
Kasson (Cedar)	10,000	100	50	25	10	25	N/A
Village of Empire	6,250	100	50/100	10 min 20 max	5	10	N/A
Village of Bellaire	6,000	N/A	50	15	5	10	25
Village of Ellsworth	12,000	N/A	60	25	10	10	50
Village of Northport	15,000	N/A	100	35	20	30	N/A
Village of Suttons Bay	20,000	200	100	25	15	50	50

PLANNING COMMISSION

STAFF COMMENT

Of the 13 communities researched, only 5 of those communities require a larger minimum lot size than the Village of Suttons Bay. Based on the information in Table #2 other communities appear to have already adjusted their parcel size, minimum lot width and setbacks to reflect the needs of their community. From a comparison standpoint, our dimensional standards appear restrictive considering they are serviced by water and sewer.

VILLAGE RESIDENTIAL REGULATIONS

There were several red flags regarding the residential districts within our community some of which we will discuss at a later date. We will narrow our focus to our dimensional standards as they exist today within our residential districts. The Village currently has three single -family zoning districts, which are described in brief, as follows:

- 1) Central Residential – this district is located within “the original street grid system and allows the lowest possible lot sizes”.
- 2) Newer Village residential - which is intended to house “medium density residential lots”
- 3) Single Family Waterfront district - intended for “larger lots, close to a half-acre minimum”

This report has largely focused on waterfront districts however it helps to be able to visually identify these parcels as we move forward. As with comparing our lot sizes to neighboring communities it is also important to look at our residential dimensional standards as a whole also.

**Table #3 – Residential Districts Dimensional Standards**

Village Residential Districts	Minimum Lot Area	Minimum Lot Depth	Minimum Lot Width/Frontage	Front Yard Setback	Side Yard Setback	Rear Yard Setback	Waterfront Setback
CRD	4000	100	40	15-25	6	10	
NVR	8000	100	80	15	15	15	
SW	20000	700	100	25	15		50
HR	10000	100	100	40	40	40	
WC	30000	150	200	35	40		50
NG	7200	100	60	15	10	10/15	50
SG	7200	120	60	15	10	10/15	50

STAFF COMMENT

As we noticed in Table #2, our lakefront lots are among the largest along the lakeshore at 20,000 sf. Again, that size is common however it is more common among smaller inland lakes rather than the much larger Lake Michigan. Interestingly, Table #3 identifies a far more intense, multi-family residential district (WC)

## PLANNING COMMISSION

that is permitted with comparable dimensional standards. Bayview is another multi-family district (not listed) with a far more intense use than that of single family.

## CONCLUSION

The changes to the Ordinance from 1991 to 2006 were quite drastic for an area that was largely developed at the time and served by water and sewer. In addition, it is also likely that property non-conformance, and property owner burden was a secondary concern to their reasoning. Regardless, if the Planning Commission desires to change various dimensional standards within the Single-Family Waterfront District, they are justified to do so however any changes should consider lessening the non-conformities rather than creating more of them.

From the research performed, the Planning Commission should consider the following:

1. The Planning Commission could ask Staff to *recommend new dimensional standards* for the district.
2. The Planning Commission may choose to *decrease the dimensional standards* to lessen the non-conforming parcels created by the 2006 zoning ordinance.
3. The Planning Commission could choose to *leave the district standards as is* and not modify them at this time.

## OTHER CONSIDERATIONS

The Village incorporates a minimum lot depth. This standard further complicates lot area and is not needed or used in most communities. The state requires any new parcel to comply with a 4:1 width to depth ratio, therefore, it is unnecessary standard that should be eliminated throughout the Ordinance.

change over time, the decision making process and factors considered in an interpretation decision should not).

9. After consideration of all of the above guidelines, and where the legislative intent of a provision is unclear and the facts cannot be clearly read to support only one interpretation of questioned provisions, the benefit of doubt should be extended to the property owner.

The following additional measures will help prevent ordinance interpretation questions:

- The zoning ordinance should have clear and simple zoning ordinance provisions. All key terms and phrases should be carefully defined, and used consistently throughout the ordinance. This will greatly reduce the likelihood of a ZBA having to interpret particular provisions.
- Review the zoning ordinance periodically with an eye to identifying unclear provisions and to correct any deficiencies.
- Include statements of clear legislative intent at the start of each zoning district and each zoning process (such as special land uses).

Source: "Zoning Ordinance Interpretation" *Planning and Zoning News*, October, 1986, pp. 7-9.

## Variations

### General Procedural Elements

A variance is the grant of specific authorization by the ZBA to utilize a lot, parcel or structure in violation of ordinance requirements when certain findings have been made. In effect, a variance is a license to violate a specific zoning ordinance requirement. Clearly variances need to be carefully considered and under normal circumstances should be rarely granted. Improperly granting variances can quickly undermine the integrity of the entire zoning ordinance.

In effect, a variance is a license to violate a specific ordinance requirement.

There are two types of variances: *use* and *nonuse*. A nonuse variance is often called a *dimensional* variance and usually deals with setback, height or lot area requirements. A use variance permits a use of land on a parcel that otherwise is not permitted in that district by the zoning ordinance. While use variances have always been authorized for use by ZBA's in cities and villages, they now may be used in those "townships and counties that as of February 15, 2006 had an ordinance that uses the phrase 'use variance' or 'variances from uses of land' to expressly authorize the granting of use variances by the zoning board of appeals" or in those "townships and counties that granted a use variance before February 15, 2006." (Section 604(9), MCL 125.3604(9)).

Many zoning scholars consider use variances inappropriate, because in effect, they rezone property without going through the amendment process, thereby usurping the power of the legislative body. That is also why the legislative bodies in many cities and villages already prohibit the ZBA from granting use variances. Township boards and county boards of commissioners are now expressly permitted to prohibit ZBAs from granting use variances.

Improperly granting variances can quickly undermine the integrity of the entire zoning ordinance.

Instead of keeping the zoning ordinance up-to-date, some cities and villages utilize the use variance as a *band-aid*. Instead of creating districts with a proper range of permitted uses, or to avoid the public scrutiny that usually surrounds a rezoning, the ZBA may be asked to grant use variances as an *easier* approach. This is an inappropriate application of the use variance authority.

There is, however, one instance where local units of government with use variance authority may be advised to grant a use variance. This is when the applicant demonstrates that no reasonable use may be

made of a parcel as it is presently zoned (i.e. that it cannot be used for any of the uses permitted in the existing zoning district) and that reasonable efforts to get the property rezoned or to obtain approval for another use (such as by a special use permit or PUD) have all been rejected. Failure to grant a use variance under these facts could be tantamount to a taking, which under United States and Michigan Supreme Court decisions, would require compensation. Local units of government are advised to not grant use variances under other circumstances.

### Alternative to Use Variances

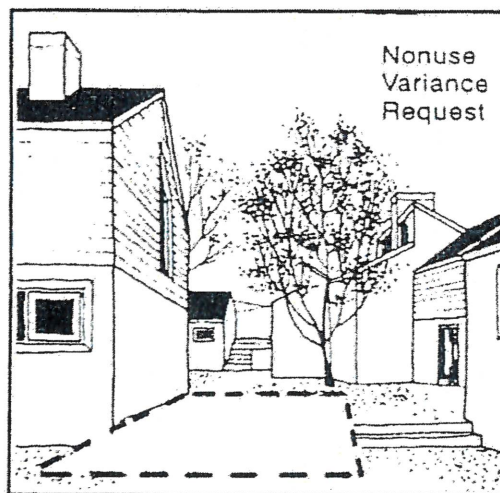
Instead of use variances granted by the ZBA, some communities try to use the conditional rezoning process. However, this approach does not give much control to the local unit of government because only the developer can offer conditions on a rezoning. As a result, more and more communities are using a variation of the PUD process if takings issues are raised. These are sometimes called *hardship PUDs*. They are authorized by separate provisions added to the zoning ordinance. The final decision is then made by the legislative body and the ZBA is not involved. There are two big benefits of this approach.

First, the final decision is made by elected officials who would be accountable in the end for a ZBA decision anyway. (Is it not better that elected officials make the final decision when possible monetary damages are on the line?) Second, the PUD process is much more amenable to considering a takings claim than the standards that have evolved by courts under use variance decisions.

See article on hardship PUDs in *Planning & Zoning News*, February 1997, pages 10-14.

When a zoning board of appeals considers a variance request, it is important that the board keep in mind that the variance authority is designed to provide relief to a property owner from an ordinance requirement that is uniquely affecting that property owner. It is not designed as a

technique to grant special favors to some persons, or as a tool to solve a problem shared in common with other properties. When a problem is common, the appropriate solution is amendment of the text of the ordinance so all similarly situated property owners are treated equally.



Expansion of a building into a required yard is a violation of the ordinance unless a dimensional (nonuse) variance is granted.

Often people will claim that a variance will allow them to make more money from the property, but this is not a legitimate reason for a variance. Zoning is not designed to permit the most profitable use of land, although reasonable use of property must be permitted.

### People Involved & General Procedures

The people involved in a variance request and the general procedures followed are the same as for an appeal (as described in the previous section).

### Sample Checklist to Guide Decisions on Dimensional Variances

The most common requests for a variance arise from specific dimensional requirements of the ordinance, such as yard requirements, setback lines, lot coverage, height and frontage requirements, and density regulations.

Where there are *practical difficulties* preventing a property owner from conforming with the strict letter of the ordinance, the ZBA has the power to grant nonuse or dimensional variances. Typically, the following circumstances must exist:

1. Dimensional zoning requirements cannot be met on an existing lot due to narrowness, shallowness or irregular shape, or the topography or natural characteristics of the site (such as a wetland, floodplain, bedrock condition, etc.) inhibit the lawful location of a principal or accessory structure (such as a septic system, garage, shed)
2. The problem creates a practical difficulty which is unique (because of the above or similar reasons) and is not shared by neighboring properties in the same zone. If the ZBA finds that the problem is not unique, but common, amending the ordinance or a rezoning should be pursued by the applicant.
3. The practical difficulty was not created by an action of the applicant. It either existed at the time of adoption of the requirement from which the variance is requested, or is necessary as the result of governmental action such as a road widening. A self-created hardship is not typically a valid basis for a variance.
4. The appellant presents information showing that the requested variance:
  - (a) Will not be contrary with the intent and purpose of the zoning ordinance;
  - (b) Will not cause a substantially adverse effect upon adjacent properties;
  - (c) Will relate only to the property under control of the appellant;
  - (d) Will not essentially alter the character of the surrounding area;
  - (e) Will not increase the hazard from fire, flood or similar dangers; and
  - (f) Will not increase traffic congestion;
5. The variance is the minimum necessary to permit reasonable use of the land and buildings for activities permitted in the zoning district.


The Michigan Court of Appeals has applied similar principles (widely

recognized in many other state courts) in variance cases:

1. To obtain a dimensional variance, the applicant must show *practical difficulty* by demonstrating that:
  - (a) Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome;
  - (b) A variance would do substantial justice to the applicant as well as to other property owners in the district, and that a lesser relaxation would not give substantial relief and be more consistent with justice to others;
  - (c) The plight of the owner is due to unique circumstances of the property; and
  - (d) The problem was not self-created.
2. The ZBA must ensure that the "*spirit of the zoning ordinance is observed, public safety secured and substantial justice done.*" (Section 604(7), MCL 125.3604(7)).  
Note: Typically this means if (d) is false, the decision is *No*. If (d) is true, and (b) and (c) are true, the decision is probably *Yes* (in this case, (a) is probably also true). If the applicant only meets (a) and the problem is not self-created (d), the decision is probably *No*. See: *National Boatland v. City of Farmington Hills*, 147 Mich App 380 (1985).

#### Sample Checklist for Decisions on Use Variances

Decisions on use variances in those communities in which use variances are permitted by statute, and in which the zoning ordinance specifically grants the ZBA use variance authority, require a concurring vote of 2/3 of the full membership of the ZBA (Section 604(10), MCL 125.3604(10)). This statutory requirement should demonstrate the significance of the use variance authority, how rarely it should be used and how hard it should be to get approval. Remember, a use variance allows a land use in a location that the ordinance otherwise prohibits. Many experts believe

		<h2 style="margin: 0;">VILLAGE OF SUTTONS BAY</h2> <h3 style="margin: 0;">ZONING REPORT</h3>	
Prepared:	6/07/2024	Pages:	1 of 1
Meeting:	June PC & Council	Attachments:	0 <input type="checkbox"/>
Subject:	Zoning Report for May 2024		

**LAND USE PERMITS ISSUED**

DATE	TOTAL	NEW HOMES	ADU	ALTERATIONS ADDITIONS	ACCES. STRUCT.	FENCE	COMMERCIAL, SIGNS / OTHER
<b>May 2024</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>Year To Date</b>	<b>9</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>3</b>

LUP 24-009      Commercial Wall Sign                      224 N. St. Joseph St., Suite 102

Three applications currently under review.

**STAFF REPORT**

- Inquiries on Land Use Permits, platted lots, signs, fences, zoning.
- Inquiries on Bayview PUD.
- Inquiries on parking requirements and shared parking.

Just an FYI to the Planning Commission - We recently denied a Land Use Permit for an Accessory Dwelling Unit because we determined that the property owners did not meet the residency requirement contained in the new zoning ordinance requirements.

The new ordinance requirements state that to have an ADU, the “owner of the parcel where an accessory dwelling exists shall reside on the property.”

In this instance, the owners inherited an existing house that has been in the family for years, but the current owners do not “reside” on the property, they live out of state, and visit seasonally. As far as we know, nobody else lives there when the owners are not there, and I believe that the owners feel the term “owner occupancy” means that they would not use the ADU unless the owners were present.

However, the term “resides” means to dwell continuously or permanently, and to occupy a place as one’s legal domicile.

In this instance, we feel that the current owner does not technically “reside” on the property, and therefore does not qualify for an ADU.

**FUTURE ACTION REQUESTED: None**