

Item 4 - Proposed Zoning Ordinance Changes to Version 4.2

MI Law Compliance Changes

ORDINANCE AMENDING ZONING ORDINANCE TO CONFORM TO THE MICHIGAN ZONING ENABLING ACT

AN ORDINANCE TO AMEND THE GLEN ARBOR TOWNSHIP ZONING ORDINANCE, VERSION 4.1, TO BRING SAID ZONING ORDINANCE INTO COMPLIANCE WITH THE MICHIGAN ZONING ENABLING ACT, PUBLIC ACT 110 OF 2006, AS AMENDED.

THE TOWNSHIP OF GLEN ARBOR ORDAINS:

Section 1. Amendment to Title of Article I.

The title to Article I of the Zoning Ordinance is hereby amended to read as follows:

ARTICLE I SHORT TITLE AND REFERENCE TO AUTHORITY

Section 2. Addition of Section I.2 to Refer to Michigan Zoning Enabling Act.

Article I of the Zoning Ordinance is hereby amended to add a new Section I.2 to read as follows:

SECTION I.2 ENABLING AUTHORITY

This Ordinance is adopted pursuant to, and in furtherance of the objectives of the Township Zoning Act, Michigan Public Act 184 of 1943 (MCL 125.271 et seq), as amended. As of July 1, 2006, the Township Zoning Act was repealed and superseded by Public Act 110 of 2006, the Michigan Zoning Enabling Act [MCL 125.3101 et seq] ("MZEA"). The continued administration of this Ordinance, amendments to this Ordinance, and all other matters concerning the operation of this Ordinance shall be implemented and accomplished pursuant to the MZEA, as amended. Effective July 1, 2006, any reference in this Zoning Ordinance to the Township Zoning Act is to be deemed a reference to the Michigan Zoning Enabling Act.

Section 3. Amendment of Article II Regarding References to Glen Arbor Planning and Zoning Commission.

Article II is hereby amended to add thereto a new Section II.4 to read as follows:

SECTION II.4 REFERENCES TO PLANNING AND ZONING COMMISSION

All references in this Zoning Ordinance to the Glen Arbor Township Planning and Zoning Commission shall be, and are hereby, amended to mean the Glen Arbor Township Planning Commission.

Section 4. Amendment of Article II Regarding Statutory References.

Article II is hereby amended to add thereto a new Section II.5 to read as follows:

SECTION II.5 STATUTORY REFERENCES

If any statute of the State of Michigan, or any section thereof, which is referenced in this Zoning Ordinance, is amended, such reference shall be deemed to refer to such statute, or section thereof, as amended.

Section 5. Amendment of Section III.2 Regarding Zoning Map.

Section III.2 of the Zoning Ordinance is hereby amended to read as follows:

SECTION III.2 MAPS

The Land Use District into which each parcel of land in the Township is placed is shown on the map entitled "Glen Arbor Township Zoning Map" and dated May ??, 2008, which map is made a part of this Ordinance. The original of the Zoning Map shall be maintained by the Township Clerk at the Township Hall, and said map or an exact copy thereof shall be available for inspection during all Township business hours.

Section 6. Amendment of Section IV.12.9(A) Regarding Reference to Zoning Ordinance.

Section IV.12.9(A) of the Zoning Ordinance is hereby amended to read as follows:

- A. Intent. It is the intent of this Section to permit the continuance and use of any sign or outdoor advertising structure not in conformance with this Zoning Ordinance, but which was lawfully existing at the time of adoption of this Zoning Ordinance or any amendment thereto. It is the intent that signs and outdoor advertising structures made nonconforming by this Ordinance or any amendment hereto shall not be enlarged upon, expanded or extended. Further, it is the intent of this Zoning Ordinance that nonconforming signs and outdoor advertising structures shall be gradually eliminated and terminated upon their natural deterioration or accidental destruction. The continuance of all nonconforming signs and outdoor advertising structures within Glen Arbor Township shall be subject to the conditions and requirements set forth herein.

Section 7. Amendment of Section IV.12.10(C) Regarding Appeals and Variances.

Section IV.12.10(C) of the Zoning Ordinance is hereby amended to read as follows:

- C. Appeals and Variances.
 - 1. The procedure for variances and appeals to the Zoning Board of Appeals under the Zoning Ordinance shall apply equally to signs regulated under this Article.
 - 2. Any party aggrieved by any order, determination, or decision made under this Section IV.12.9 as to a nonconforming sign by the Zoning Administrator, the Planning Commission, the Township Board or the Zoning Board of Appeals may obtain review of that decision as provided in Section 607 [MCL 125.3607] of the MZEA.

Section 8. Amendment of Section XI.1 Regarding Discontinuance of Nonconforming Uses or Activities.

Section XI.1 of the Zoning Ordinance is hereby amended to read as follows:

SECTION XI.1 NONCONFORMING USE / ACTIVITY

At the discretion of the owner, the lawful use/activity of any parcel of land, building, or structure, lawfully existing at the time of enactment of this Zoning Ordinance or any amendment thereto, and the existence of which has continued since that date, although such use/activity does not conform to the ordinance requirements of the zoning district in which it is located, may be continued subject to the following.

A. **ABANDONMENT.** When any building, structure or land, the use of which has been permitted as a nonconforming use or nonconforming structure pursuant to the provisions of this Article, is no longer intended by its owner to continue as a nonconforming use or nonconforming structure, the use of the land or the structure shall be discontinued. The owner's intent to no longer continue the nonconforming use of the land or structure shall be established by a preponderance of the evidence which shall consider the following:

1. Whether utilities have been disconnected.
2. Whether any signs have been removed or have fallen into disrepair.
3. Whether any fixtures within and outside the building have been removed.
4. Whether the property has fallen into disrepair or is considered "blighted."
5. Whether U.S. Mail delivery has been terminated or mail is forwarded to another address.
6. Whether the classification of the property for tax purposes has been changed to reflect another use.
7. Whether any licensed associated with the use has expired.
8. Whether there are any other similar changes to the nonconforming structure or use.

Action to determine if a nonconforming use was intended to be discontinued by the owner may be delayed, if any of the following is ongoing:

- i. The ownership and/or possession of the property is pending in Probate Court.
- ii. The property is the subject of a disputed insurance settlement.
- iii. The property is the subject of a criminal investigation.

B. **COMPLETION OF CONSTRUCTION.** Any building or structure arranged, intended or designed for a nonconforming use/activity, the construction of which has been started as of the effective date of this Zoning Ordinance or any amendment thereof, but not completed, may be completed and put to such nonconforming use/activity, provided it is completed and receives a certificate of occupancy from the Leelanau County Building Inspections Department.

C. **EXTENSION OF ACTIVITIES.** Any nonconforming use/activity under the terms of this Zoning Ordinance may be enlarged without changing the type of use/activity upon receipt of a permit from the Zoning Administrator. Such enlarged use/activity must conform to all of the requirements of this Zoning Ordinance as said requirements pertain to such use/activity in that zoning district in which that use/activity is permitted and as said requirements pertain to nonconforming uses/activities and nonconforming structures.

Section 9 Amendment of Article XI Regarding Appeals of Decisions Regarding Nonconforming Uses/Activities.

Article XI of the Zoning Ordinance is hereby amended to add thereto a new Section XI.3 to read as follows:

SECTION XI.3 APPEALS.

Any party aggrieved by any order, determination, or decision of any officer, agency, board, commission, zoning board of appeals, or legislative body of Glen Arbor Township under this Article may obtain a review of that order, determination or decision in the Leelanau County Circuit Court as provided for in Section 607 of the MZEA [MCL 125.3607].

Section 10 Amendment of Article XIII.2 to correct reference to Clustered Zoning Option.

Section XIII.2 is hereby amended to read as follows:

SECTION XIII.2 SCOPE

The Clustered Housing Zoning Option is permitted in the Agricultural and Residential Districts. The Clustered Housing Zoning Option is permitted in subdivisions and site condominiums. No more than one unit will be allowed within 150 feet of any lake or river for each 100 feet of water frontage.

Section 11 Amendment of Section XIII.6 Regarding Base Zoning Regulations and Site Variations for the Clustered Housing Zoning Option.

Section XIII.6 of the Zoning Ordinance is hereby amended to read as follows:

SECTION XIII.6 BASE ZONING REGULATIONS AND SITE VARIATION

The Clustered Housing Zoning Option is a planned unit development under the Michigan Zoning Enabling Act and, as such, in addition to the requirements of this Ordinance, it is subject to the procedures and requirements of Section 503 [MCL 125.3503] of the MZEA. No decision regarding a Clustered Housing Zoning Option under this Zoning Ordinance may be appealed to the Zoning Board of Appeals. This shall not preclude an individual lot owner from seeking a variance following the approval of a Clustered Housing Zoning Option, provided such variance does not involve alterations to open space or regulatory modifications as provided for in the approved Clustered Housing Zoning Option site plan.

Section 12. Amendment of Article XIII to Add Thereto a New Section XIII.10 Regarding Public Hearings for the Clustered Housing Zoning Option.

Article XIII is amended to add thereto a new Section XIII.10 to read as follows:

SECTION XIII.10 PUBLIC HEARINGS FOR CLUSTERED HOUSING ZONING OPTION.

Before approving, denying or approving with conditions an application for a Clustered Housing Zoning Option, the Planning Commission shall hold a public hearing. Notification of the public hearing shall be given in the manner provided for in Section 103 of the MZEA [MCL 125.3103] or, if applicable, Section 306 [MCL 125.3306] and/or Section 202 [MCL 125.3202] of the MZEA.

Section 13. Amendment of Article XIV to Add a New Section XIV.9 Regarding Notices for Public Hearings.

Article XIV of the Zoning Ordinance is hereby amended to add thereto a new Section XIV.9 to read as follows:

SECTION XIV.9 NOTICES FOR PUBLIC HEARINGS.

Whenever this Zoning Ordinance or the Michigan Zoning Enabling Act requires a public hearing to be held, notice of the public hearing shall be given in the manner provided for in Section 103 of the MZEA [MCL 125.3103], as modified (where appropriate) by the following Sections:

Section 202 [MCL 125.3202];
Section 306 [MCL 125.3306];
Section 401 [MCL 125.3410];
Section 502(2) and (3) [MCL 125.3502(2) and (3)];
Section 503(5) [MCL 125.3503(5)];
Section 508(4) [MCL 125.3508(4)];
Section 604(4) [MCL 125.3604(4)]; and
Section 604(5) [MCL 125.3604(5)].

Section 14. Amendment of Section XVI.5 Regarding Public meetings.

Section XVI.5 of the Zoning Ordinance is hereby amended to read as follows:

SECTION XVI.5 PUBLIC MEETINGS

All meetings of the Zoning Board of Appeals shall be open to the public and shall be held in compliance with the Michigan Open Meetings Act [MCL 15.261 et seq].

Section 15. Amendment of Section XVI.6 Regarding Powers of the Zoning Board of Appeals.

Section XVI.6 of the Zoning Ordinance is hereby amended to read as follows:

SECTION XVI.6 POWERS OF THE ZONING BOARD OF APPEALS

The Zoning Board of Appeals is empowered to act only upon the following matters

- A. Questions arising in the administration of this Ordinance regarding the interpretation of this Zoning Ordinance, including interpretation of the Glen Arbor Township Zoning Map.
- B. Appeals from an order or decision made by the Zoning Administrator, the Planning Commission or any other official body where it is alleged by the appellant that there is an error in such order or decision.
- C. All matters which this Ordinance properly refers to the Board of Appeals for determination.
- D. Requests for a nonuse variance relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the Zoning Ordinance or to any other nonuse-related standard in the Zoning Ordinance. In granting a variance, the Zoning Board of Appeals may impose conditions as is otherwise allowed under this Ordinance. Before granting a nonuse variance, the Zoning Board of Appeals shall find:
 1. The strict application of the provisions of this Ordinance would result in practical difficulties which relate only to the property for which the variance is sought. The practical difficulties shall:
 - a. prevent the carrying out the strict letter of this Ordinance;

- b. are related to the physical characteristics of the property and not economics;
 - c. consist of extraordinary physical conditions such as shallowness, slope or topography of the property involved, or to the intended use of the property, or uses in the same zoning district.
2. Granting the variance will not be contrary to the public interest or to the intent of this Ordinance.
 3. Granting the variance shall not have the effect of permitting the establishment within a district of any use which is not permitted by right within that zoning district.
 4. Granting the variance will not cause a substantial adverse effect upon property values in the immediate vicinity of the request.
 5. Granting the variance is necessary for the preservation of substantial property rights possessed by other properties in the same zoning district.
 6. Granting the variance will observe the spirit of this Ordinance.

Section 16. Amendment of Section XVI.7 Regarding Appeal Procedures

Section XVI.7 of the Zoning Ordinance is hereby amended to read as follows:

Section XVI.7 APPEALS; PROCEDURES.

- A. Appeals. An appeal under this Zoning Ordinance to the Zoning Board of Appeals shall be taken within such time as shall be prescribed by the Zoning Board of Appeals by general rule, by the filing with the officer from whom the appeal is taken and with the Zoning Board Appeals of a written notice of appeal specifying the grounds for the appeal, accompanied by such fee as is established from time to time by resolution of the Township Board. The body or officer from whom the appeal is taken shall immediately transmit to the Zoning Board of Appeals all of the papers constituting the record upon which the action appealed from was taken.

Upon receipt of a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the Township and shall be sent to the person requesting the interpretation not less than 15 days before the public hearing. In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.

- B. Variances. All requests for variances over which the Zoning Board of Appeals has jurisdiction shall be filed in writing with the Zoning Administrator accompanied by such fee as is established from time to time by resolution of the Township Board.

Following receipt of a written request for a variance, the Zoning Board of Appeals shall fix a reasonable time for the hearing of the request and give notice as provided in section 16.3

- C. Reasonable Conditions. The Zoning Board of Appeals may impose conditions with an affirmative decision, including conditions necessary to insure that public services and facilities affected by the appeal will be capable of accommodating the loads caused by the use, to protect the natural environment and conserve natural resources and energy, to ensure compatibility with

adjacent uses of land, and to promote the use of land in a socially and economically desirable manner.

D. Finality of Decision. The decision of the Zoning Board of Appeals shall be final.

Section 17. Amendment of Section XVI.10 regarding Further Appeal to Circuit Court.

Section XVI.10 of the Zoning Ordinance is hereby amended to read as follows:

Section XVI.10 Appeal to Circuit Court.

Any party aggrieved by a decision of the Zoning Board of Appeals may file an appeal with the Leelanau County Circuit Court. As provided in MCL 125.3606(3), an appeal to circuit court under this section shall be filed within 30 days after the zoning board of appeals certifies its decision in writing or approves the minutes of its decision.

Section 18. Effective Date.

This ordinance shall take effect seven (7) days after publication in accordance with law.

At a regular meeting of the Board of Trustees of Glen Arbor Township held on _____, adoption of the foregoing ordinance was moved by _____ and supported by _____.

Voting for:

Voting against:

The supervisor declared the ordinance adopted.

John Soderholm
Township Supervisor

Bonnie Quick
Township Clerk

CERTIFICATION

The foregoing is a true copy of Ordinance No. ____ which was enacted by the Glen Arbor Township Board of Trustees at a regular meeting held on _____, 200_.

Bonnie Quick
Township Clerk