

CITY OF MASON

201 West Ash St.
Mason, MI 48854-0370

City Hall 517-676-9155
Fax 517-676-1330

ZONING BOARD OF APPEALS MEETING – 2ND FLOOR TRAINING ROOM Wednesday, September 14, 2011

5:30 p.m.

Agenda

1. Call to Order
2. Roll Call
3. Approval of Minutes: August 10, 2011
4. People from the Floor
5. Announcements
6. Public Hearing
 - A. 448 Raging River – Variance – Rear Yard Setback
Resolution No. 2011-05 – A Resolution Approving A 24.71 Foot Rear Yard Variance For An In-ground Pool On Property Located At 448 Raging River
7. Regular Business
 - A. Discussion – Zoning Board of Appeals Bylaws
8. Unfinished Business
9. New Business
10. Correspondence
11. Administrator Report
12. Adjournment

**CITY OF MASON
ZONING BOARD OF APPEALS MEETING
MINUTES OF AUGUST 10, 2011**

Jenkins called the meeting to order at 5:50 p.m. in the 2nd Floor Training Room at 201 W. Ash Street, Mason, Michigan.

Board Member(s) Present: Crips, Harbach, Jakeway, Jenkins, McCormick
Board Member(s) Absent: Curtis, Richards
Also present: David Haywood, Zoning and Development Director

APPROVAL OF MINUTES: July 13 2011

The Meeting Minutes of the July 13, 2011 meeting were approved.

PEOPLE FROM THE FLOOR

None.

REGULAR BUSINESS

Discussion – Motions and Findings of Fact

Haywood briefly reviewed Chairperson Jenkins' memorandum of January 15, 2010 regarding proper motions. Discussion ensued. Haywood reported that he would provide a more polished form for making motions at the September meeting.

Haywood briefly reviewed Chairperson Jenkins' memorandum of February 19, 2010 regarding findings of fact. A lengthy discussion ensued. Haywood reported that he would develop a more polished form for recording findings of fact.

Discussion – Practical Difficulty

Haywood briefly reviewed Chairperson Jenkins' memorandum of December 27, 2010 regarding practical difficulty and distributed supporting information from a variety of sources demonstrating what constitutes a practical difficulty. The Board discussed the issue at great length and showed appreciation for having the discussion and looked forward to continued dialogue on the issue.

Discussion – Zoning Board of Appeals Bylaws

Haywood reported that he did not find bylaws for the ZBA in his search of City records, but did find a memo from the City attorney from 1980 that discussed the possibility of creating bylaws. Haywood reported that he had a request into the City Attorney's office and had not heard back, but will report his findings at the next meeting.

UNFINISHED BUSINESS

At the July meeting, the Board expressed that they would like to discuss whether an expiration date can be placed on variances that are not started or finished within a reasonable amount of time. Haywood reported that he found that Michigan case law prohibits placing time limits on variances, that variances are granted in perpetuity and run with the land.

NEW BUSINESS

None.

CORRESPONDENCE

None.

ADMINISTRATOR'S REPORT

Haywood gave a brief report of Zoning and Development business.

ADJOURNMENT

By consensus, the meeting adjourned at 7:09 p.m.

Deborah J. Cwierniewicz, City Clerk

City of Mason

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P.O. Box 370
Mason, MI 48854-0370
www.mason.mi.us



City Hall 517 676-9155
Police 517 676-2458
Fax 517 676-1330
TDD 1-800-649-3777

MEMORANDUM

TO: Zoning Board of Appeals

FROM: David E. Haywood, Zoning & Development Director *DA*

SUBJECT: Variance Request – 448 Raging River (Robert & Karin Manes)

DATE: September 8, 2011

The applicant is requesting approval for a variance to be allowed to construct an in-ground pool in the rear yard behind the principal residential structure that would be 10.29 feet from the rear property line. Section 94-173(e) requires that pools conform to the applicable setback requirements for the zoning district in which it is located. The subject property is located in the RS-2 zoning district and has a rear yard setback requirement of 35 feet. The applicant is, therefore, requesting a variance.

LAND USE AND ZONING PATTERN:

The property is located in the RS-3: Single Family Residential zoning district. The site is currently occupied with a single family residence. The surrounding land uses and zoning are as follows:

	Current Land Use	Zoning
North	Residential	RS-2: Single Family Residential
South	Residential	RS-2: Single Family Residential
East	Common Areas/Residential	RS-2: Single Family Residential
West	Residential	RS-2: Single Family Residential

NOTIFICATION:

Twenty-nine letters were sent out notifying the public of this request. As of the writing of this report, one response has been received from Howard and Lynda Inman, 449 Raging River, in support of the request.

INTENT:

Section 94-121 of the Zoning Ordinance indicates that the general intent and purpose of zoning district regulations is to “accommodate permitted uses and structures in a manner that minimizes negative impacts on abutting properties and complements the unique character and identity of the city through appropriate architectural design including building size, building height, building materials, building location, signage, landscaping, buffering, safe circulation of vehicular and pedestrian traffic, and other pertinent development features”.

POOLS:

Section 94-173(e) states, “Pools used for swimming or bathing shall not be located in any front yard and shall conform to the applicable yard and setback standards for a principle structure. Any fencing, barriers, and structures shall comply with the state construction code and county health department specifications. Any lights used for illumination of a swimming pool shall be arranged or shaded so as to reflect light away from adjoining premises”.

VARIANCE STANDARDS:

Article XI of Chapter 94 of the Mason Code authorizes the Zoning Board of Appeals to grant variances. Section 94-365 provides the basic conditions that must be met in order to grant a variance. The following are the basic conditions that must be met in order to grant a variance, including additional conditions that may be placed on the approval:

1. *The variance must be granted in order to avoid practical difficulties not created by the applicant that would result from strict application of the letter of this chapter.*
2. *A variance will not permit the establishment within a zoning district of any use not permitted within the district.*
3. *A variance will not cause a substantial adverse effect to property or improvements in the zoning district and the immediately surrounding neighborhood.*
4. *A variance will not be contrary to the public interest and will insure that the spirit and intent of this chapter will be observed, public safety secured, and substantial justice done.*
5. *There is no lesser variance than that applied for which would give substantial relief to the applicant.*

Attachments:

1. Resolution 2011-05
2. Application and cover letter
3. Site Plan

Introduced:
Seconded:

**CITY OF MASON
ZONING BOARD OF APPEALS RESOLUTION NO. 2011-05**

**A RESOLUTION APPROVING A 24.71 FOOT REAR YARD VARIANCE FOR AN IN-
GROUND POOL ON PROPERTY LOCATED AT 448 RAGING RIVER**

September 14, 2011

WHEREAS, a request has been received by Robert and Karin Manes, the owner of record of parcel 33-10-10-05-227-003, for a variance to the rear yard setback requirement to construct an in-ground pool on property located at 448 Raging River; and

WHEREAS, the subject property is further described as: Lot 25, Riverwalk Meadows, Sec 5, T2N R1W, City of Mason, Ingham Co (1997); and

WHEREAS, the subject property is located in the RS-2: Residential Single Family zoning district; and

WHEREAS, Section 94-173(e) requires that pools meet the applicable setback requirement for principle structures for the zoning district in which they are located; and

WHEREAS, Table 100-1 of the Mason Code requires a 35 foot rear yard setback for principle structures within the RS-2: Single Family Residential zoning district; and

WHEREAS, upon compliance with the conditions of approval listed herein, the variance request will comply with the conditions of approval in Section 94-365 of the Mason Code; and

WHEREAS, a public hearing on the request was noticed and held at the Zoning Board of Appeal's regular meeting of September 14, 2011, with testimony given and public comment solicited in accordance with Section 94-101 of the Mason Code.

NOW THEREFORE BE IT RESOLVED, that the City of Mason Zoning Board of Appeals does hereby approve the request for variance to the rear yard setback requirements to allow the construction of an 16 foot by 36 foot in-ground pool in the rear yard behind the existing residential structure that would be 10.29 feet from the east property line on property located at 448 Raging River as based on the plans received by the Zoning & Development Department on August 12, 2011.

Yes ()

No ()

CLERK'S CERTIFICATION: I hereby certify that the foregoing is a true and accurate copy of a resolution adopted by the Zoning Board of Appeals at its regular meeting held Wednesday, September 14, 2011, the original of which is part of the Zoning Board of Appeals minutes.

Deborah J. Cwierniewicz, Clerk
City of Mason
Ingham County, Michigan

APPLICATION – ZONING BOARD OF APPEALS

City of Mason

Planning Department • 201 W. Ash Street • Mason, MI 48854

Phone: 517/676-9155 • Fax: 517/676-1330

www.mason.mi.us



Applicant– Please check one of the following:	
<input checked="" type="checkbox"/>	Variance
<input type="checkbox"/>	Appeal of Administrative Decision
<input type="checkbox"/>	Interpretation of Ordinance Text
<input type="checkbox"/>	Zoning District Boundary Interpretation
<input type="checkbox"/>	Temporary Permit

PLANNING DEPARTMENT USE ONLY	
Application Received:	<u>8/12/11</u>
Tax ID:	<u>05-227-003</u>
Fee:	<u>\$ 250.00</u>
Receipt #:	<u>100115001</u>

I. APPLICANT INFORMATION

Name Robert and Karin Manes

Organization home owners

Address 448 Raging River Rd. Mason

Telephone Number 517-303-6499 Facsimile Number _____

Interest in Property (owner, tenant, option, etc.) _____

Note: If applicant is anyone other than owner, request must be accompanied by a signed letter of authorization from the owner

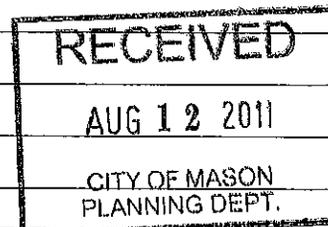
II. PROPERTY INFORMATION

same Owner Robert + Karin Manes Telephone Number 517-303-6499

Property Address 448 Raging River Rd.

Legal Description: If in a Subdivision: Subdivision Name Riverwalk Meadows Lot Number #25

If Metes and Bounds (can be provided on separate sheet): _____



APPLICANT CERTIFICATION

By execution of this application, the person signing represents that the information provided and the accompanying documentation is, to the best of his/her knowledge, true and accurate. In addition, the person signing represents that he or she is authorized and does hereby grant to City officials a right of entry for the purpose of inspecting the premises to verify compliance with conditions precedent to issuing Zoning Board of Appeals approval.

Signature Karin L. Manes Date Aug. 10th, 2011

IV. APPLICATION MATERIALS

The following information must be submitted with this completed application form:

1. **Variances:** Variance requests must be accompanied by a basic site plan drawn to a readable scale showing the location of property lines, existing and proposed structures and parking areas, setback dimensions from property lines and other buildings, easements, existing roads, utility connections, floodplain and topography (where it has a bearing on the request), and any other information necessary to adequately show the nature of the request.
2. **Temporary permits:** Temporary requests must be accompanied by a basic site plan drawn to a readable scale showing the location of property lines, existing and proposed structures and parking areas, setback dimensions from property lines and other buildings, easements, existing roads, utility connections, and any other information necessary to adequately show the nature of the request.
3. **All requests must be accompanied by a fee, as established by City Council (Effective October 16, 2007). The fee for requests to the Zoning Board of Appeals is \$250.00.**
4. **All requests must be accompanied by any additional information deemed necessary by the Planning Department Staff.**
5. Feel free to include written descriptions, elevation or other drawings, maps, photographs, and/or any other documentation that might aid the Board of Appeals in making a determination. Applicants are encouraged to review Article XI of Chapter 94, Zoning, of the Mason Code, which describes the procedures and standards that the Board of Appeals will use to evaluate a request.

Note: The applicant must submit 13 copies of any documents that are larger than 11" by 17".

V. APPLICATION DEADLINES

Regular meetings of the Zoning Board of Appeals are held on the second Wednesday of every month, at 5:30 p.m. To be placed on the meeting agenda, all Application Materials must be received at least 4 weeks in advance of the meeting.

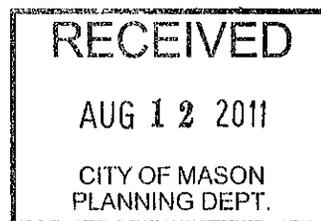
The Board of Appeals will not take action on the request unless the applicant or his/her duly authorized representative is present at the public hearing.

VI. STAFF REPORT

The Planning Department Staff will prepare a report to the Zoning Board of Appeals regarding your request. The report will explain the request to the Board and review whether it complies with the standards in the Zoning Ordinance. Staff will present the findings of that report during the Zoning Board of Appeals meeting. An applicant who wishes to obtain one (1) copy of that report, at no cost, prior to the meeting must provide a written request to the Planning Department. The report is generally complete on the Friday before the meeting and can be mailed to the applicant or picked up by the applicant in the Planning Department.

B. Written Description:

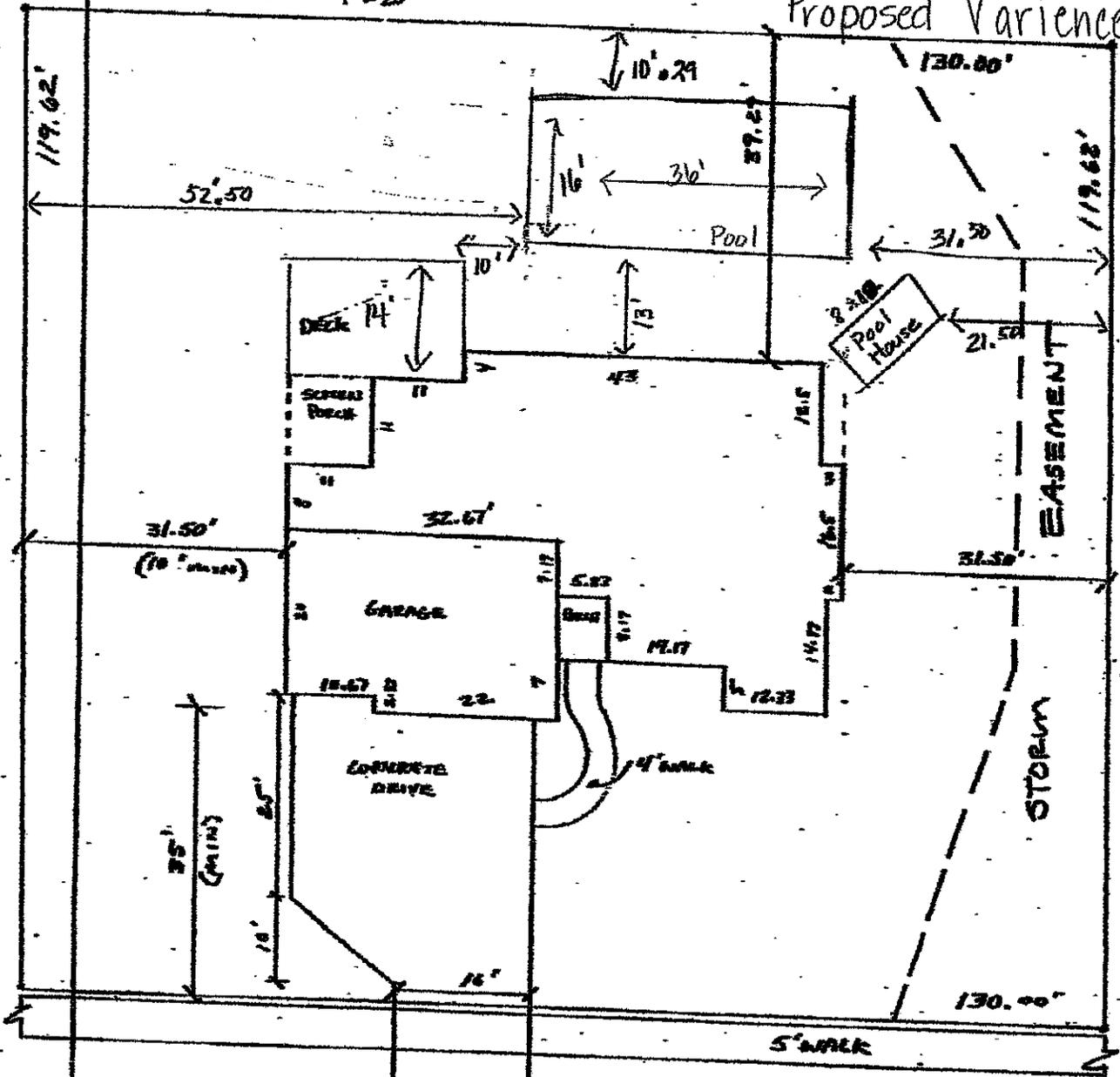
We are asking for a rear setback variance to put in an inground swimming pool. It is our understanding that the Mason rear setback requirement is 35 feet. We are requesting a 10.29 foot rear setback which is in compliance with the states' requirement of 10 feet. The side setbacks are within compliance as noted on our diagram. The area butting up to our rear property line is open subdivision common area.



Lot 25 Riverbank Meadows, City of Mason

North
1" = 20"

Proposed Variance

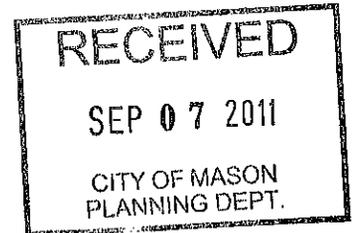


RAGING RIVER ROAD

RECEIVED
AUG 12 2011
CITY OF MASON
PLANNING DEPT.

FROM THE DESK OF
Lynda Inman

September 3, 2011
Zoning and Development Director
201 W. Ash Street
Mason, MI 48854



Re: Notice of Public Hearing-448 Raging River

Dear David Haywood:

We have been notified of the proposed construction of an in-ground pool on the Bob Manes property at 448 Raging River. We would like to notify all concerned parties that we have no objection to its construction. If you have any further questions of us we would be happy to answer them.

Sincerely yours,

A handwritten signature in cursive script that reads "Lynda Inman".

Howard and Lynda Inman

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MEMORANDUM

TO: Zoning Board of Appeals

FROM: David E. Haywood, Zoning & Development Director 

RE: Bylaws

DATE: September 8, 2011

Over the past several meetings the Board has expressed an interest in establishing bylaws for the purpose of enforcing member attendance among other issues. The City Attorney's office has informed me that they have no record of developing bylaws for the ZBA.

A few questions arose at the August ZBA meeting relative to bylaws and attendance, including:

Should bylaws be adopted to regulate/enforce attendance of Board members?

There is no formal attendance policy for the ZBA. However, Section 94-361(3) of the zoning ordinance states, "A member of the zoning board of appeals may be removed by the city council for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing". Therefore, it is up to the discretion of the council as to what level of unexcused absences constitutes a removable offense.

Can the Mayor dismiss a ZBA member?

No. The Mayor does not have the authority to remove a ZBA member. The City Council has the sole jurisdiction to remove a member after written charges and a public hearing, as stated above.

It seems that how a member of the ZBA is removed is clearly defined in the ordinance and lies solely with the City Council. However, there is some question as to what level of absence is needed to qualify as inexcusable. Developing bylaws to help the Council make their determination in such a case may be helpful to them. However, the number of cases the Council has heard in the last fifteen years is zero. Therefore, developing bylaws for this purpose may be more effort than it's worth. If it is determined that the ZBA would like to move forward with this effort, staff would be more than happy to assist. Attached is a sample of the Planning Commission's bylaws adopted in 2009, as required by state law.

I am available if you have questions or concerns.

MASON PLANNING COMMISSION

BY-LAWS

These by-laws are adopted by the Mason Planning Commission (herein after referred to as the Commission) in accordance with Section 19(1), Michigan Planning Enabling Act 33, Michigan Public Act of 2008, as amended.

Note: Please refer to Chapter 50 of the Mason Code for additional information on the following Commission issues:

- Creation of a Planning Commission
- Terms and Organization
- Meetings and Records
- Expenditures
- Functions, Duties, Master Plan

ARTICLE I – OFFICERS

Section 1.0 Officers. The officers of the Commission shall consist of a Chair, Vice-Chair, and Secretary (which may also be held by the Chair or Vice-Chair) elected by the Commission from its members at its Annual Meeting. Officers shall serve for a period of one year and may be re-elected.

Section 1.1 Duties. The duties and powers of the officers of the Commission shall be as follows:

CHAIR

1. To preside at all meetings of the Commission.
2. To call Special Meetings of the Commission in accordance with these By-Laws.
3. To see that all actions of the Commission are properly taken.
4. To appoint Sub-Committees of the Commission which in the Chair's opinion, are required to assist the Commission in carrying out its responsibilities.
5. To sign all official documents and letters on behalf of the Commission.

VICE-CHAIR

1. During the absence, disability, or disqualification of the Chair, the Vice-Chair shall exercise or perform all the duties and be subject to all the responsibilities of the Chair.

SECRETARY

The Secretary shall serve as the liaison between the Commission and the zoning administrator or other designated City staff. The Secretary shall be responsible for the execution of documents in the name of the Commission, keep a public record of its resolutions, transactions, findings, and determinations of the Commission, and perform such other duties as required by state statute or as the Commission may determine.

CITY COUNCIL LIAISON – The City Council liaison representative to the Commission shall report the actions of the Council to the Commission and update the Commission on actions by the Council that relate to the functions and duties of the Commission.

Section 1.2 Vacancies. Should any vacancy occur among the members of the Commission by reason of death, resignation, disability or otherwise, immediate notice thereof shall be given to the City Clerk, who shall forward it to the Mayor and City Council. Should any vacancy occur among the officers of the Commission, the vacant office shall be filled in accordance with the provisions of these By-Laws, such officer to serve the unexpired term of the office in which the vacancy occurred.

ARTICLE II – MEETINGS

Section 2.0 Annual Meeting. The Annual Meeting of the Commission shall be the first regular meeting in the month of January, each year. Such meetings shall be devoted to the election of officers for the ensuing year and such other business as may be scheduled by the Commission.

Section 2.1 Regular Meetings. Regular Meeting of the Commission shall be held in the City Hall at 6:30 p.m., on the Tuesday following the second Monday of each month. At such meetings the Commission shall consider all matters properly brought before it. A Regular Meeting may be cancelled or rescheduled by the Commission at a prior meeting or by a majority of the Commission with at least five days public notice, the necessary proper notice to be determined by the Commission.

The Commission shall, by resolution, set the dates, by December 31st, for all regular meetings to be held during the following year.

Section 2.2 Special Meetings. Special Meetings of the Commission shall be held at a time and place designated by the Chair or Vice-Chair or two members of the Commission upon written request to the Secretary. Notice thereof shall be given to all members of the Commission not less than forty-eight (48) hours in advance of said Special Meetings.

Section 2.3 Quorum. At any meeting of the Commission, a quorum shall consist of five

members of the Commission. No action shall be taken in the absence of a quorum except to adjourn the meeting to a subsequent date. If a quorum is unattainable within a reasonable amount of time by the advertised meeting date and time, the meeting shall be adjourned until the next regular meeting.

Section 2.4 Voting. At all meetings of the Commission, each member attending shall be entitled to one vote. Voting shall be by voice, except where a majority of the Commissioners present vote for a roll call vote. All votes shall be recorded by "yes" and "no".

Section 2.5 Conflict of Interest. In the event that any member of the Commission shall have a conflict of interest, as defined in Section 2-104(d) of the Mason Code, in a matter then before the Commission, he or she shall disclose his or her interest to the Commission. The Commission shall determine whether such personal interest constitutes a conflict of interest and may disqualify the affected Commissioner from voting on the matter in question. The Minutes shall reflect that no vote was cast by the member by virtue of his or her personal interest in the matter.

Section 2.6 Incompatibility of Office. If a member of the Commission is appointed to another office, which is an incompatible office with his or her membership on the Commission, then on the effective date of the appointment to the other office that shall result in an automatic resignation from the Commission. If a member of another office is appointed to the Commission, which is incompatible with his or her membership in the other office, then on the effective date of the appointment to the Commission, the member shall resign from the other office. Failure to resign from the other office will result in ineligibility for Commission membership.

Section 2.7 Commission Action. The affirmative vote of a majority of the members of the Commission shall be required for the adoption of any resolution or other voting matter, including the adoption of a subplan, EXCEPT that the affirmative vote of two-thirds of the Commission shall be required to adopt the Master Plan or any amendment thereto.

Prior to action, motions shall be restated by the Chair. The name of the maker and the supporter of the motion shall be recorded in the Minutes.

The reasons for the action by the Commission shall be specified in the Minutes.

Section 2.8 Site Visits. Site visits shall be done by the zoning administrator or other designated City staff. A written report of the site visit shall be orally presented to the Commission at a public meeting. No more than one member of the Commission may accompany the zoning administrator or staff on a site visit. Members of the Commission may perform unaccompanied site visits.

Section 2.9 Ex-Parte Communication. The Commission desires to conduct all proceedings fairly, to create a record that includes all of the evidence upon which recommendations and decisions were made, and to prevent the appearance of undue influence on its recommendations and decisions. To this end, Commission members whom experience ex-parte communication should disclose the details of the communication at the Commission meeting after the introduction of the item of which the ex-parte communication pertained.

Commission members may attend meetings held by applicants with adjacent property owners, however only in the capacity of an observer. If a Commission member does decide to take part in discussions at said meeting, he/she shall disclose the nature of their participation to the Commission prior to participating in a hearing or deliberations on a request. The Commission shall make a determination as to whether or not he/she can impartially consider the request.

Section 2.10 Conduct of Meetings. All meetings of the Commission shall be opened to the public in accordance with the Open Meetings Act, Public Act 267 of 1976. The order of business at meetings shall be as described in the By-Laws as established by City Council.

Section 2.11 Public Hearings. Hearings shall be scheduled and due notice given in accordance with the provisions of the Open Meetings Act and applicable State law and local ordinance. Public hearings shall be conducted in the following manner:

1. Announce Subject. The Chair announces each agenda item and describes the subject to be considered. The Chair then declares the public hearing open and announces the time.
2. Present Proposal. The Chair begins by inviting the applicant to present their proposal and then invites the staff liaison to present their review/analysis of the proposal. The Commission may ask questions of the applicant or staff during this time.
3. Hearing Procedures. The Chair may summarize the public comment rules at this time as outlined in Section 4 of the Rules of Order established by City Council.
4. Open the Hearing to the Floor. The Chair shall call on the public, one speaker at a time, and may call upon the applicant or staff to clarify information about the proposal.
5. Close the Public Hearing. Upon seeing no additional public to give comments, the Chair shall give notice to the public of

"last call" for comments. If there are no additional public to provide comments upon last call, the Chair shall declare the public hearing closed and announce the time.

Section 2.12 Adjourned Meetings. The Commission may adjourn a Regular or Special Meeting if all business cannot be disposed of on the day set, and no further public notice shall be required for the meeting if the time and place of its resumption is stated at the time of adjournment and is not changed after such adjournment.

Section 2.13 Parliamentary Procedure. All meetings of the Commission shall be conducted in accordance with Robert's Rules of Order insofar as they do not conflict with these By-Laws or the Rules of Order as established by City Council.

ARTICLE III – ABSENCES, REMOVALS AND RESIGNATIONS

Section 3.1 Absences. In order to be excused from a meeting, members of the Commission shall notify the Commission Chair, staff liaison or another member of the Commission when they intend to be absent from a regular meeting. Failure to make this notification at least twenty-four hours prior to the meeting shall result in an unexcused absence. More than four consecutive, unexcused absences or absences at twenty-five percent (25%) of regular meetings in one calendar year may be considered nonfeasance of duty and cause of removal from the Commission.

Section 3.2 Removal. Members of the Commission may be removed by the City Council for nonfeasance, malfeasance, or misfeasance upon written charges and after a public hearing.

Section 3.3 Resignation. A member may resign from the Commission by sending a letter of resignation to the City Clerk, who shall forward it to the Mayor and City Council.

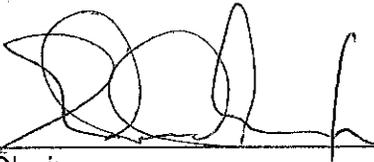
ARTICLE IV – AMENDMENTS/CONFORMITY WITH STATE LAW AND CITY ORDINANCES

Section 4.0 Amending By-Laws. These By-Laws may be amended at any meeting of the Commission provided that said amendment is distributed to each Commission member at least five days prior to said meeting.

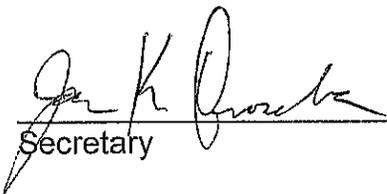
Section 4.1 The Commission shall conduct itself in conformity with the requirements of the Michigan Planning Enabling Act and all other pertinent State laws and City ordinances. To the extent there is a conflict with these By-laws, the state law or ordinance shall control. The remaining provisions of the

By-laws not in conflict, shall remain in full force and effect.

Adopted by the Commission: August 11, 2009



Chair



Secretary

Revised: September 15, 2009