

MANISTEE CITY ZONING BOARD OF APPEALS
70 Maple Street, P.O. Box 358
Manistee, MI 49660

MEETING MINUTES
January 9, 2003

A meeting of the Manistee City Zoning Board of Appeals was held on Thursday, January 9, 2003 at 5:30 p.m. in the City Council Chambers of City Hall, 70 Maple Street, Manistee, Michigan.

MEMBERS PRESENT: Ray Fortier, Ed Grabowski, Marlene McBride, John Perschbacher and Mark Wittlief

ALTERNATES ABSENT: Tom Bramble and William Kracht

OTHERS PRESENT: Lynn Monet (Manistee Inn and Marina), Andy Barrette (Pro Builders), Jeff Skinner (57 Greenbush), Keiu Ngo (57 Greenbush), Jon Rose (Community Development Director) and Mark Niesen (Building and Zoning)

The meeting was called to order at 5:32 p.m. by Chair John Perschbacher.

PUBLIC HEARING:

Manistee Inn and Marina, 378 River Street

Manistee Inn and Marina, 378 River Street. The Manistee Inn and Marina would like to construct porches/decks on the rear of their building overlooking the River. This would require *a variance to the waterfront set-back from 50 feet to 39 feet*. The building is currently 46 feet from the water (4 feet into the set-back), the porches/decks would be approximately 6 feet out from the building.

This project is located in the Historic Overlay District and final design plans are subject to Historic Approval.

Lynn Monet explained the benefit the porches/decks would have on the business at the Manistee Inn and Marina. They would be make the rooms more appealing and would be constructed in an attractive manner providing greater views of the river to customers.

Ed Grabowski asked about the size of the porches/decks. Andy Barrette from Pro Builders said that they would provide a 6 foot by 10 foot porch/deck for each room. Mark Niesen explained trex planking to the members of the board. Ed Grabowski asked how the waterfront set-back is established. Mr. Niesen said that they use the sheetpiling from the riverwalk as the waters edge. Jon Rose spoke about the separation panels on the deck and reminded members that Historic Overlay approval will be required for this project.

Jeff Skinner and Keiu Ngo asked if they could look at the plans. Mr. Niesen explained the proposed porch/deck addition to them.

Mr. Niesen read a letter from Lee Trucks, Jackpine Press Inc. supporting the request for a variance.

There being no further discussion the public hearing closed at 5:45 p.m.

BUSINESS SESSION:

Minutes

MOTION by Ed Grabowski, supported by Mark Wittlief that the minutes from the November 26, 2002 Zoning Board of Appeals Meeting be approved.

MOTION PASSED UNANIMOUSLY

John Perschbacher welcomed Ray Fortier as the new Planning Commission Representative on the Zoning Board of Appeals.

Manistee Inn and Marina, 378 River Street

A Public Hearing was held earlier in response to a request from Manistee Inn and Marina to allow the construction of porches/decks on the rear of their building overlooking the Manistee River requiring a variance to the waterfront set-back from 50 feet to 39 feet.

MOTION by Ed Grabowski, seconded by Marlene McBride that the request from Manistee Inn and Marina, 378 River Street to reduce the waterfront set-back from 50 feet to 39 feet to construct porches/decks on the rear of their building overlooking the Manistee River be approved.

Motion was made with the following findings of fact:

Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands structures, or buildings in the same Land Use District.

The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the Land Use District under the terms of this Ordinance.

The special conditions and/or circumstances are NOT the result of actions taken by the applicant or the previous property owner since adoption of the current Ordinance.

Granting of the variance would be in harmony with the general purpose and intent of the Ordinance and would NOT be injurious to the neighborhood, or otherwise detrimental to the public welfare.

MOTION PASSED UNANIMOUSLY

OTHER BUSINESS:

BY-LAW UPDATE

Members of the Zoning Board of Appeals have been working on updating their By-Laws for several months. An annual review of the By-Laws will be scheduled for the first meeting of each year after the election of officers.

John Perschbacher spoke of his concerns with Mark Niesen acting as the Recording Secretary. Mr. Rose explained to Mr. Perschbacher that this is a common practice and the City does not want to pay for an additional employee to take the minutes during the meetings.

MOTION by Ed Grabowski, seconded by Mark Wittlief that the Zoning Board of Appeals adopt the attached By-Laws which will be dated adopted January 9, 2003.

Ayes: Ray Fortier, Ed Grabowski, Marlene McBride and Mark Wittlief

Nays: John Perschbacher

MOTION PASSED.

ELECTION OF OFFICERS

At this time the meeting was turned over to Mark Niesen to accept nominations for the election of officers.

Ed Grabowski wanted to go on record that he did not want to be a candidate for any positions.

Chair

Ed Grabowski nominated John Perschbacher for the position of Chair.

Nominations were asked for three times. There being no further nominations the nominations were closed.

John Perschbacher was elected as the Chair for the Zoning Board of Appeals for 2003 with voting as follows:

Yeas: Ray Fortier, Ed Grabowski, Marlene McBride and Mark Wittlief

Nays: John Perschbacher

Vice -Chair

Ray Fortier nominated Mark Wittlief for the position of Vice - Chair.

Nominations were asked for three times. There being no further nominations the nominations were closed.

Mark Wittlief was elected as the Vice - Chair for the Zoning Board of Appeals for 2003 with voting as follows:

Ayes: Ray Fortier, Ed Grabowski, Marlene Mc Bride, John Perschbacher and Mark Wittlief.

Secretary

Ray Fortier nominated Marlene McBride for the position of Secretary.

Nominations were asked for three times. There being no further nominations the nominations were closed.

Marlene McBride was elected as the Secretary for the Zoning Board of Appeals for 2003 with voting as follows:

Ayes: Ray Fortier, Ed Grabowski, Marlene Mc Bride, John Perschbacher and Mark Wittlief

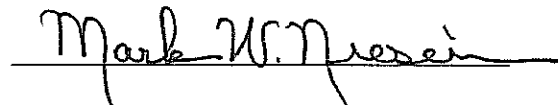
Recording Secretary

Marlene McBride Secretary of the Zoning Board of Appeals appointed Mark Niesen as the recording secretary for 2003.

ADJOURNMENT:

There being no further business meeting motion by Ray Fortier, seconded by Marlene McBride that the meeting be adjourned. Meeting adjourned at 6:36 p.m.

Respectfully Submitted

A handwritten signature in black ink that reads "Mark W. Niesen". The signature is written in a cursive style and is positioned above a horizontal line.

Mark W. Niesen, Recording Secretary

CITY OF MANISTEE ZONING BOARD OF APPEALS BY LAWS AND RULES OF PROCEDURE

Section 1.0 Purpose

The following rules of procedure are hereby adopted by the City of Manistee Zoning Board of Appeals (hereinafter known as Appeals Board) to facilitate the performance of its duties as outlined in the Manistee City Zoning Ordinance.

Section 2.0 Officers

- 2.1 Selection.** At the first scheduled meeting of each year, the Appeals Board shall select from its membership a Chairman, Vice Chairman, and Secretary. All officers are eligible for reelection.
- 2.2 Tenure.** The Chairman, Vice Chairman, and Secretary shall take office at the next meeting after their selection and shall hold office for a term of one year or until their successors are selected and assume office.
- 2.3 Duties.** The Chairman shall preside at all meetings, and perform such other duties as may be ordered by the Appeals Board. Appoint an acting Secretary for a meeting at which the Secretary is absent.
- 2.4 Duties.** The Vice Chairman shall act in the full capacity of the Chairman in the absence of the Chairman and in the event the office of the Chairman becomes vacant, the Vice-Chairman shall succeed to this office for the unexpired term and the Appeals Board shall select a successor to the office of Vice-Chairman for the unexpired term.
- 2.5 Duties.** The Secretary shall execute formal documents in the name of the Appeals Board. The Secretary or his or her designee shall perform the duties hereinafter listed and shall perform such other duties as the Appeals Board may determine. The Secretary shall be responsible for the record and minutes of each meeting. The Secretary shall be responsible for copies of the minutes being distributed to each member of the Appeals Board, prepare an Agenda for each meeting, be responsible for all communications, petitions and reports addressed to the Appeals Board. The Secretary shall keep attendance records and shall notify the City council whenever any member of the Appeals Board is absent from three consecutive regularly scheduled meetings so the City Council can take further action pursuant to Section 4.2 of these rules of procedure and by laws.

Section 3.0 Notice of Appeal

- 3.1 Filing.** Any interested person, or the person's authorized agent, may appeal or seek a variance in writing on a form provided by the Zoning Administrator at any time, and upon payment of a fee as may be established from time to time by the governing body. A meeting will be scheduled within 30 days of receipt of the appeal.

3.2 Notification.

- A. The Secretary or his or her designee shall schedule a meeting date with the Zoning Administrator and the members of the Appeals Board. Members of the Appeals Board will be mailed a notice no later than five (5) days before the scheduled meeting date. The Secretary or his or her designee shall prepare copies of the following for inclusion in the package sent to Appeals Board members:
- (1) copies of the Notice of Appeal or request for a variance form;
 - (2) relevant contents of the Zoning Administrator's file, and/or other file(s) on the case;
 - (3) other relevant correspondence, permits by other applicable enforcement agencies;
 - (4) previous zoning permits and record of appeals board actions concerning the property in question; and
 - (5) anything else which is relevant.
- B. Notice of such meeting shall be delivered in person or by first class mail to:
- (1) the Manistee City Manager's office,
 - (2) any other interested persons,
 - (3) the landowner,
 - (4) adjacent landowners and occupants,
 - (5) and a notice sent by first class mail to the person and/or agent seeking the appeal or variance.

3.3 Deadline for Action. The above notwithstanding, the Appeals Board shall hear the case and render and file its decision with a statement of reasons for the decision with the Zoning Administrator not more than 30 days after receipt of the case, unless a longer period of time is mutually agreed upon by the petitioner and Appeals Board.

3.4 Site Inspection. The Appeals Board, if the chairman considers it necessary, may conduct a site inspection at the site at issue. In such instance, the site inspection shall be posted as part of the public meeting/hearing. A quorum of the Appeals Board shall not ride in the same vehicle to or from a site inspection or to or from a meeting. The site inspection, if posted as part of the same meeting/hearing shall always be held the same day and as the part of the same meeting as the start of the public hearing on the case. Nothing in this paragraph shall prevent members of the Appeals Board from individually and separately visiting a site in question at their own expense and time. A quorum of the Appeals Board shall not make site inspections or otherwise discuss a Notice of Appeal except during posted open meetings of the Appeals Board.

3.5 Notice of Decision. The Secretary, or his or her designate, shall cause to have notices of the Appeals Board decision delivered in person or by first class mail to the Zoning Administrator; and to anyone else requesting a copy in writing. Further, notice of the decision to the petitioner, or his agent, filing the case shall be sent by first class mail.

Section 4.0 Meetings.

- 4.1 Regular Meetings.** Meetings of the Appeals Board will be called as needed in response to receipt of a Notice of Appeal, so long as the meeting is scheduled within 30 days of the Notice of Appeal. The meeting can be called by the Zoning Administrator of the City of Manistee, the Chairman of the Appeals Board, or, in his absence, the Vice-Chairman.
- 4.2 Attendance.**
- A. If any member of the Appeals Board has unapproved absences from three consecutive meetings, then that member shall be considered delinquent. Delinquency shall be grounds for the City Council to remove any member of the Appeals Board for nonperformance of duty or misconduct of office, or both.
 - B. When a petitioner or their agent fails to appear at a properly scheduled meeting of the Board of Appeals, the Chairman may entertain a motion from the Board to dismiss the case for want of prosecution. In the absence of a motion by the Board, the chair shall rule. In cases which are dismissed for want of prosecution, the petitioner will be furnished written notice of the action by the Secretary of the Board or his or her designee.
- 4.3 Other meetings.** Meetings shall be called by delivering meeting notice by first class mail or by personal delivery to members of the Appeals Board at least five days prior to such meeting and shall state the purpose, time, location of the meeting and shall be posted at the City Hall not more than fifteen (15) days/not less than five (5) days prior to such meeting.
- 4.4 Public.** All meetings, hearings, records and accounts shall be open to the public, and posted in compliance with P. A. 267 of 1976, being the Michigan Open Meetings Act.
- 4.5 Quorum.** Three (3) members shall constitute a quorum for the transaction of business and the taking of official action for all matters. Whenever a quorum is not present at a meeting, those present may adjourn the meeting to another day or hold the meeting for the purpose of considering such matters as are on the agenda. No action taken at such a meeting shall be final or official unless and until ratified and confirmed at a subsequent meeting when a quorum is present by acting to approve the minutes of the meeting at which the quorum is not present.
- 4.6 Order of Business. Agenda.** The Secretary or his designate shall prepare an agenda for each meeting and the order of business therein shall be as follows:
- A. Call to order and roll call.
 - B. Site inspection, then recess (optional, if the meeting is posted to include a site inspection).
 - C. Reconvene and roll call (if following a site inspection).
 - D. Election of officers, if necessary.
 - E. Public Hearings.
 - F. Recess to another night as provided in Section 4.9 of these rules of procedure (optional).
 - G. Approval of Minutes

- H. Business Session.
 - (1) Action on pending case
 - (2) Old Business
 - (3) Other business of the Appeals Board.
- I. Adjournment.

- 4.7 **Speaking at Meetings.** The following order shall be followed for speaking during meetings:
- A. The petitioner --through himself, his agent, his lawyer-- may present his case, including presenting witnesses on his behalf. No time limit will be imposed on the petitioner.
 - B. Members of the Appeals Board shall report on their site inspection and any conversations with the petitioner they may have had.
 - C. Members of the public who support the petitioner speak and correspondence is read. At the chairman's option he may:
 - (1) may recess the meeting for a short time to allow those in support to caucus in order to have one speak on their behalf for an unlimited period of time if there are a large number of people present on an issue.
 - (2) may allow many to speak in favor of the petitioner and can impose a time limit for the speaker that is three (3) minutes or more per speaker.
 - D. Members of the public who oppose the petitioner speak and correspondence is read. At the chairman's option he may:
 - (1) may recess the meeting for a short time to allow those in opposition to caucus in order to have one speak on their behalf for an unlimited period of time if there are a large number of people present on an issue.
 - (2) may allow many to speak in opposition of the petitioner and can impose a time limit for the speaker that is three (3) minutes or more per speaker.
 - E. Rebuttal. Any member of the public may ask the Chairman questions on presentations or speeches given at this hearing. The Chairman will seek an answer to the question. Answers shall be given to the Chairman. No discussion, questioning or answering shall take place between any two or more members of the public except between the Chairman and the individual who has the floor.
- 4.8 **Comments Out of Order.** The chairman shall rule out of order any irrelevant remarks; remarks which are personal, about another's race, religion, sex, physical condition, ethnic background, beliefs, or similar topics; profanity; or any other remarks which are not about land use.
- 4.9 **Recesses.** The Chairman may recess a public hearing and/or meeting to another time if the meeting (not including site inspections) has been in session over three hours, or for other reasons. In order for a recess to be in order, the time, day, month, date, year and location to reconvene shall be stated as part of the action to recess. If a meeting and/or public hearing reconvenes over 36 hours after the action to recess, the reconvened meeting shall be posted at least 18 hours before the time of the reconvened meeting, to comply with Section 4.4 of these rules of procedure. Upon reconvening, a roll call vote shall be taken as the first order of business.

- 4.10 Parliamentary Procedure.** Meetings shall be conducted in a formal manner, and parliamentary procedure shall be governed by Roberts Rules of Order if not specifically dealt with in these rules of procedure.
- 4.11 Motions.** Motions shall be reiterated by the Chairman before a vote is taken.
- 4.12 Voting.** Voting shall be by voice or shall be by roll call and each vote recorded in the minutes. Roll call votes shall only be done upon request of a member or by ruling of the Chairman. A quorum of three (3) regular or alternate members, with a maximum of five (5) members, must be present to take any action. A Motion is only adopted if three or more of the members of the Appeal Board casts their votes in favor of the motion. Members must be present to cast a vote.
- 4.13 Conflict of Interest.** As used here a conflict of interest shall at a minimum include, but not necessarily be limited to, the following:
- A. A member of the Appeals Board issuing, deliberating, voting or reviewing a case where he/she is:
 - (1) an applicant, or
 - (2) has a direct interest in the case, or
 - (3) chooses to intervene in a case and is done in such a manner that the appeals member feels, in his/her judgement, that his/her job, scope of duties and/or position may be a risk, pending the outcome of the permitting process.
 - B. A member of the Appeals Board issuing, deliberating, voting or reviewing a case:
 - (1) involving a corporation, company, partnership, or other entity in which he is a part owner, or any other relationship where he may stand to have a financial gain or loss, or
 - (2) which is an action which results in a pecuniary benefit to himself, or
 - (3) concerning his spouse, children, step-child, grandchildren, parents, brother, sister, grandparents, parents in-law, grandparents in-law or member of his household.
 - C. The Planning Commission Representative to the Appeals Board will abstain from any case where as a member of the Planning Commission he or she made a decision which resulted in the appeal.
 - D. When a member of the Appeals Board determines a conflict of interest exists he or she shall do the following immediately:
 - (1) notify staff and Chair to allow opportunity to contact an alternate member, and
 - (2) declare a conflict exists at the beginning of the meeting where the case appears on the agenda, or when the topic brought up so such declaration is recorded in the minutes, and
 - (3) refrain from participating in the discussion, site inspection or review of the case, except where specific information has been requested by the commission, and
 - (4) refrain from casting a vote on any motion having to do with the case.

Section 5.0 Records

5.1 Preparation. A record of each meeting, including hearings and site inspections, shall be prepared by the Secretary, or his or her designate.

5.2 Content/Retention.

- A. The original minutes from the meeting shall be kept on file by the City Clerk.
- B. The following items will be placed into the property record file in the City Assessors office:
 - (1) The original request for a variance or notice of appeal, whichever is applicable, including any maps drawings, site plans or other information submitted by the applicant
 - (2) A copy of the meeting posting
 - (3) A copy of the notice of publication to the newspaper
 - (4) A copy of the mailing list, and Affidavit of Mailing
 - (5) Copy of the minutes from the meeting
 - (6) Copy of any correspondence received or sent in regard to the case.
 - (7) A copy of any follow-up correspondence to or from the petitioner regarding the decision.
- C. The following items will be placed on file in the Zoning Administrators Office:
 - (1) A copy of the meeting agenda
 - (2) A copy of the meeting minutes
 - (3) A copy of the memo sent to the members of the Appeals Board
 - (4) A copy of the variance or notice of appeal, whichever is applicable, including any maps drawings, site plans or other information submitted by the applicant
- D. Copies of the minutes shall be distributed to each member of the Appeals Board prior to their next meeting.
- E. A copy of the minutes shall be available to the public within seven days of the meeting by posting a copy in the lobby of City Hall.

Section 6.0 Per Diem and Mileage

Mileage and per diem may be paid to members of the Appeals Board at rates established by the Manistee City Council for attending Appeals Board meetings, and other authorized meetings and trips, if those members submit a bill for the same. Only mileage may be paid for attendance at site inspection meetings, if those members submit a bill for the same. No mileage or per diem is paid to any members unless authorized and budgeted by the Manistee City Council.

Section 7.0 Other Duties

The Appeals Board may also formulate and provide advice and may advise policy to the planning commission or any committee thereof, on issues dealing with administration, text, map and enforcement of the zoning ordinance.

Section 8.0 Adoption and Repeal

Upon adoption of these rules of procedure by the Appeals Board all previous rules of procedure, as amended, shall be repealed.

Section 9.0 Amendments

These rules may be amended at any regular or special meeting by a majority vote of the total members of the Appeals Board, so long as such amendment does not result in a conflict with state law, zoning ordinance or court decision.

ADOPTED BY CITY OF MANISTEE ZONING BOARD OF APPEALS - JANUARY 9, 2003