

# **CITY OF MANISTEE PLANNING COMMISSION**

## **WORKSESSION AGENDA**

**Thursday, May 20, 2004 - 7:00 p.m.  
Manistee Middle School Library  
550 Maple Street, Manistee, Michigan**

**I Call to Order.**

**II Worksession Items:**

1. Review Zoning Language - Adaptive Reuse for Multiple Family Dwellings
2. Zoning Ordinance Re-Write
3. Other

**III Adjourn.**

# MEMORANDUM

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TO: Planning Commissioners

FROM: Denise Blakeslee   
Administrative Assistant - Community Development Department

DATE: May 7, 2004

RE: Planning Commission Worksession May 20, 2004

I am preparing your memo early because I will be off of work next week. I have copied the memo from Jay Kilpatrick regarding the review of the existing zoning ordinance. Once the language is completed for the Adaptive Reuse for Multiple Family Dwellings Jon will copy it and mail out the packets.

I will be back in the office on Monday, May 17, 2004 and will be attending the Worksession on the 20<sup>th</sup>.

If you are unable to attend please call me at 723-2558.

:djb

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# Williams & Works

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◆ Engineers  
◆ Planners  
◆ Surveyors

## MEMORANDUM

**TO:** Mr. Jon Rose, Community Development Director  
City of Manistee

**FROM:** Jay Kilpatrick, AICP, PCP

**DATE:** December 24, 2003

**RE:** Review of the Existing Zoning Ordinance

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As a place to begin the rewrite of the Manistee Zoning Ordinance, this report is intended to identify sections of the ordinance that are confusing, poorly structured or which require further language to assure effective land use control in the community. We have read through the existing ordinance carefully and have identified both minor wording changes we would suggest as well as more fundamental adjustments. Although not a comprehensive audit of the document, this report may be used as a check list of some of the more critical issues with the understanding that more input locally will be needed to develop a final ordinance that is fully responsive to the community's objectives.

**OVERALL FORMAT.** As a general comment, the overall structure and text of the existing ordinance present a generally clear document. However, a couple formatting matters would certainly help in updates and cross-referencing. For example, the pages are simply numbered sequentially. This means that any amendment that results in the addition or removal of pages will necessitate a re-printing of the entire document or a break in the sequential page numbering system. The solution to this is to begin page numbering anew with each Article (e.g., 1-1, 1-2, 1-3.....2-1, 2-2, 2-3, etc.).

The use of italicized fonts for defined terms is helpful, providing it is limited only to the form of the term that is actually defined. In addition, it appears that this technique is not consistently applied throughout the draft. For example, the word "use" is defined in the ordinance as a noun in the context of land use. However, it is italicized throughout much of the document regardless of how it is employed in context. It may be employed in context as an adjective (i.e., use district), or as a verb (See Section 1071, "No person shall use...") and be italicized as a defined noun. Alternatively, it may not be italicized if it is used in its plural form (i.e., "uses"). Furthermore, in some parts of the ordinance italics are not used (see Article 76). In a few instances we also found terms italicized but not defined (see Section 1072, A, "movable").

We would suggest that the value of this technique be carefully weighed against the potential difficulty in maintaining the ordinance and avoiding confusing cross-references.

**ARTICLE 1 – TITLE, PURPOSES AND LEGAL CLAUSES.** Section 102 lists the purposes of the Zoning Ordinance and generally follow the enabling language of Act 207 of 1921, the City and Village Zoning Act. However, it also adds some standards that may be problematic for the City. Paragraph J indicates a purpose is to “protect against fire...” which might be interpreted as some degree of assurance. We would suggest this language be replaced with “To reduce the potential risk of fire...” Similarly, the language of Paragraph L seems to promise that the Zoning Ordinance will preserve property values. This sets up arguments about declining property values that may or may not be caused by zoning decisions. The value of land and buildings is impacted by numerous forces, many of which have nothing to do with zoning. We recommend removal of standards that either seek to evaluate land use change based on its anticipated impact on values or which seem to promise to protect property values. Finally, this section references the former Master Plan and this reference should be made more general.

**ARTICLE 5 – DEFINITIONS.** Definitions are of primary importance in the effective use of the Zoning Ordinance. As a general comment, it is helpful to divide the definitions by alphabet so that if an amendment is necessary, only one section needs to be changed. Another general comment relates to the use of the Standard Industrial Classification (S.I.C.) Manual as the default for terms that are not defined. As indicated below, we would not recommend a continuation of the use of the S.I.C. manual as a basis for the ordinance. As a result some definitions may need to be added.

In addition, at Section 505, the ordinance includes definitions for a few uses that are not included for some reason in Section 503. This is confusing and may cause some misinterpretation of the ordinance. For ease of use, all definitions should be included in the same part of the ordinance.

Some terms normally found in a Zoning Ordinance are not defined in the Manistee ordinance. These include the following:

Access	Attic	Bed and Breakfast
Billboard	Boat	Boat Launch
Comprehensive Plan	Condominium	Density
Essential Services	Filtered View of Water	Grade
Home-based Business	Impervious Surface	Keyhole Development
Living Area	Lot	Master Deed
Parcel Area	Principal Building	Principal Use
Service Drive	Sign (various types)	Site Plan
Windmill (Wind Energy Conversion Systems)	Zoning Lot	

Note that the above list does not include the definitions of the numerous uses found in the Zoning Ordinance which are tied to the SIC language. If that manual is not used as a basis for the regulated uses, definitions will be needed for some land use terms that are not currently defined in the Zoning Ordinance.

A further general comment regarding definitions is the relative lack of illustrations. Many of the key concepts in zoning lend themselves to illustration that can be an important aid to the zoning staff, the Planning Commission and applicants. Terms such as Basement, Bluff Line, Building Height, Sign, and Vegetation Belt lend themselves to illustrations.

**ARTICLE 10 – GENERAL REGULATIONS.** This section of the ordinance is intended to describe procedures and concepts for the use of the ordinance's regulatory structure. Many of the key provisions needed are present in this section, although a few fundamental principals do not appear. For example, it is important that each parcel be limited to one principal use. Many ordinances fail to include this simple provision and multiple use structures or facilities can quickly confound local regulation, as a result.

Another issue that comes up in the context of General Regulations is the potential to confuse general law (or police power) regulation with land use and zoning regulation. A simple way to conceive of the difference is to recognize that under normal circumstances if a resident or business proposes to make a change to their property, they are required to obtain a zoning permit, which triggers the terms of the Zoning Ordinance. On the other hand, day-to-day behavior or activities that do not require a zoning permit are more effectively regulated under a general law ordinance. For example, Section 1020 recognizes this and refers to the City Code for the enforcement of unlawful trash. However, parts of Section 1012 talk about the proper storage of hazardous substances, but since that activity may occur without any zoning permit, it is very difficult for the Zoning Administrator to enforce such provisions if no zoning permit is required.

Section 1042 establishing maximum structure heights does not describe how height is measured. Normally, height is measured from the average or median grade elevation of a site, but on a steeply sloping or undulating lot, this may be difficult to establish.

Section 1051, C, 4, refers to the "city's certification maps of city streets." Is this map kept current and is it readily available? Similarly, Section 1052, C, references the City's private road standards. Is this document available and current?

Section 1054 defines the minimum parking requirements for the ordinance. They do not provide for shared parking, which can result in an excess of unused asphalt for much of the year. In addition, the minimum parking requirement for retail trade of one space for each 100 square feet of floor area is very excessive. The Institute of Transportation Engineers studies found an average

parking need of 2.87 to 3.42 spaces per 1,000 square feet of floor area for a supermarket. A convenience store required between 1.41 and 4.0 spaces per 1,000 square feet while a furniture store required between 0.99 and 1.22 spaces per 1,000 square feet.<sup>1</sup> In every case, the City's standard would be 10 spaces per 1,000 square feet of floor area plus one space for every two employees. Also, the parking standards do not seem to contemplate parking layouts other than perpendicular.

Section 1061 regulates Sexually Oriented Businesses. This language, together with the definition of the use, appears to be the extent of this regulation. Many communities have much more detailed standards based on ordinance standards crafted after a detailed study of the effects of these uses and with drafting by attorneys with expertise in the field. However, with the isolation and location standards of the ordinance (1,000 feet from a school or church and without frontage on US-31) it is important to determine that there are feasible locations in the City where such a facility could locate. If the City has reviewed this matter and developed these standards with care and legal counsel, the standards are probably appropriate.

Section 1070 and Ordinance 99-8 establish standards for accessory buildings. Subparagraph D states that an accessory building cannot be "larger than" the principal building. This language suggests the need for a definition for the term "principal building" and a need to clarify what is meant by "larger than." This could refer to height, area, volume, frontage, etc. Also, in some industrial uses, warehouse storage could dictate the need for a structure larger than the manufacturing facility which this language would not permit.

**ARTICLE 14 - SIGNS.** This section is structured as a free-standing ordinance with its own definitions, permits and inspection structure. However, inclusion of the ordinance in the Zoning Ordinance as a separate Article appears to tie it to the zoning process. This needs to be clarified. Section 1416 is structured to diminish (or amortize) non-conforming signs and prohibits a change in the sign's content or the repair of deteriorated signs if the costs exceed 50% of the replacement cost. To properly implement this language, a complete inventory of existing signs as of the date of adoption of the ordinance should have been undertaken. Was this done? This is important if the intent is to eventually do away with non-conforming signs. Also, inclusion of this section in the Zoning Ordinance makes the amortization of non-conforming signs unworkable under Section 3a, of the City and Village Zoning Act. Communities that desire to eventually eliminate non-conforming signs, establish a completely separate general law ordinance, complete the necessary study to establish that signs of a certain character are detrimental to the health, safety and welfare of the community and establish a reasonable timetable for their removal. Enacting such an ordinance under the authority of the City and Village Zoning Act automatically subjects the ordinance to the "grandfathering" provisions of zoning.

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<sup>1</sup> Institute of Transportation Engineers, *Parking Generation*, 1987

A further comment on sign regulations relates to Billboards. The Highway Advertising Act constrains the ability of local government to regulate billboards, but it does not prevent some degree of regulation, especially with regard to setback, heights and isolation from other uses. I note that billboards are included in the table found at Section 1421 of the Zoning Ordinance. This implies that billboards are treated more or less as an accessory to other development, much like a business sign. The City may want to reconsider this approach. Given the imposing nature of billboards which are essentially outdoor advertising media, a preferred approach is to treat them as a principal use on a parcel. This has the effect of allowing the City to establish site-specific regulations and it also helps prevent a proliferation of billboards as accessory to other commercial uses.

**ARTICLE 16 – SPECIAL USE PERMIT STANDARDS AND REGULATIONS.** This Article provides use-specific standards for a few of the special uses identified in the Zoning Ordinance. This is an excellent approach to regulating uses that may have off site impacts that limit their appropriateness in some areas. The use-specific standards allow the Planning Commission and the applicant to focus on the potential negative impacts of the use and the site-specific approaches to mitigate them. However, given the structure of the City's Zoning Ordinance with its use of the SIC code to identify uses, a comprehensive ordinance would require use-specific standards for literally hundreds of special uses. If the reference to the SIC standards is abandoned and a limited list of special uses is developed, this Article could provide a very effective and predictable regulatory structure.

Also with regard to this Article, Mobile Home Park regulations are provided at Section 1603 and are listed as special uses in the R-5 district. The rules of the Manufactured Housing Commission (MHC) and the Mobile Home Commission Act prohibit local regulation of mobile home parks that exceed the requirements of the MHC unless the locality can demonstrate that they are not unreasonable or arbitrary and are in the public interest. In practice, the Commission has applied this authority very broadly and has denied most local standards. In addition, the MHC has ruled with support from the courts that mobile home parks must be treated as a permitted use in a community. Thus, the City's approach found in Section 1603 treating these facilities as special uses probably could not be sustained, if challenged.

**ARTICLES 18 THROUGH 76: DISTRICT STANDARDS.** As a general comment, an ordinance with twenty zoning districts and overlays covering an area of less than four square miles may be attempting a degree of refinement that may not be workable in reality. It will be important to review each district in conjunction with the 2002 Master Plan and determine whether it accomplishes a useful degree of regulation or whether its primary purpose could be achieved with some less complicated mechanism. It is important to remember, in this connection, that an amendment to the Zoning Ordinance text to accommodate changes in uses is often simpler to accomplish than a rezoning.

A second general comment on the districts Articles relates to the use of the SIC code to define land uses. The SIC classification tends to list uses based on similar economic characteristics, not necessarily their land use impacts. Also, the structure of the ordinance is such that a general SIC classification includes all the sub-classifications included within the general classification. Thus, Services [70 - 8999] as provided in several districts includes a broad range of establishments, from campgrounds, to hospitals, to auto repair shops and private dwellings. In some districts, these uses are listed both as permitted uses and as special land uses, further increasing the confusion of which standards to apply. I believe this approach detracts from the ordinance and should be abandoned in the rewrite.

The following comments address key issues or concerns we have with respect to some of the districts.

**Article 24: Cemetery District.** This is an unusual zoning district. Normally, cemeteries are treated simply as other land uses - permitted in some districts, but not in others. Establishing a district essentially limited to only this one use may not be sustainable, if challenged. However, if the land area included in the district is publicly owned as a cemetery, or is otherwise committed as an existing cemetery, this may be less of a problem.

**Article 26: Civic Center District.** The reference to "Special Project Plan number 6 and the 1988 Master Plan in Section 2601 should be reviewed and updated if still applicable.

**Article 27: Multiple Use District.** Section 2701 also includes reference to the "Special Project Plan number 1" and the 1988 Master Plan. Also a confusing aspect of this section is the fact that many uses are listed as both permitted uses and special uses. It is not at all clear what might trigger the application of one set of standards over the others.

**Article 29: Transition District.** The reference to the 1988 Master Plan in Section 2901 should be reviewed and updated if still applicable.

**Article 40: R-1 Residential District.** The reference to "Special Project Plan number 3 and 4" and the 1988 Master Plan in Section 4001 should be reviewed and updated if still applicable.

**Article 42: R-2 (Special) Residential District.** The reference to "Special Project Plan number 4, 5 and 7" and the 1988 Master Plan in Section 4201 should be reviewed and updated if still applicable. Also, this district includes annotation language concerning ZBA rulings on waterfront setbacks. The rewrite of the Zoning Ordinance presents an opportunity for the standards approved by the ZBA to be memorialized in the ordinance as part of the district standards, if they represent City policy. Finally, since the essential dimensional requirements of the R-1 and R-2 districts are identical, it might be appropriate to combine these districts into one, with locational standards to address the slight differences in uses permitted.

**Article 44: R-3 Residential District.** The reference the 1988 Master Plan in Section 4401 should be reviewed and updated if still applicable.

**Article 46: R-4 Residential District.** The reference to "Special Project Plan number 5" and the 1988 Master Plan in Section 4601 should be reviewed and updated if still applicable.

**Article 48: R-5 Residential District.** The reference to the 1988 Master Plan in Section 4801 should be reviewed and updated if still applicable. Also, as indicated above, the treatment of mobile home parks as special land uses probably would not survive a legal challenge.

**Article 50: C-1 Commercial District.** This district might be referred to as a "regional commercial" or "highway commercial district." It lies along the US-31 corridor and appears to contemplate larger scale retail and similar operations. However, it is surprising that Planned Unit Developments are not included in the special uses. This development technique offers both flexibility to address site-specific conditions and a more precise degree of regulatory control for the City. Regional commercial areas are an ideal locale for PUDs.

**Article 53: C-2 Commercial District.** The reference to "Special Project Plan number 2" and the 1988 Master Plan in Section 5301 should be reviewed and updated if still applicable. This district might be referred to as "local commercial" or "Neighborhood commercial" in that it promotes uses that tend to serve the immediate neighborhood. The zoning map, however, only illustrates a one-block area of C-2 located on either side of 1<sup>st</sup> Street, east of US-31. If this is the only area of the City where such uses are desired, it might be more efficient to simply combine C-1 and C-2 uses, since the area currently zoned C-2 includes relatively small parcels and likely would not develop into "big box" establishments.

**Article 55: C-3 Commercial District.** The reference to the Manistee Lake Management Plan of 1982, "Special Project Plan number 2" and the 1988 Master Plan in Section 5501 should be reviewed and updated if still applicable. Like some of the other districts, the list of permitted uses and special uses include identical designations. However, in this case, there are triggering criteria to enable a determination of which approach applies. In a couple instances, the uses permitted by right are such that they must, by definition, be treated as special uses. For example, "Outdoor Recreation - Parks" would be permitted by right as long as all activities are carried out in an enclosed building. So, since the use involves "outdoor" recreation it would not qualify as a permitted use and must be treated as a special use. It is pointless to list it as a permitted use.

**Articles 58 and 59: C-4 and C-4A Commercial Districts.** The references to the 1988 Master Plan and to the Downtown Preservation and Development Plan in Section 5801 should be reviewed and updated if still applicable. These two districts function as the "central business

district" of the City. Other than a relatively modest difference in dimensional standards and one or two uses, the district standards are virtually identical and the two districts adjoin each other in the downtown area of the City. It would be appropriate to consider merging these districts and addressing the modest differences in uses through the special use standards.

**Article 60: I-1 Industrial District.** Section 6002 essentially incorporates a use-restricted overlay by making a distinction between uses that may be located within 200 feet of residential districts. However, the language of 6002 seems to limit the locations where the less intense uses are permitted to only those areas within 200 feet of residential districts. This seems unnecessarily restrictive for these uses.

**Articles 67 and 69: I-2 Lakefront Industrial and Renaissance Zone Districts.** These districts are consistent with the Master Plan. However, in the recent discussions regarding the Northern Lights Power Plant application, the Planning Commission heard numerous speakers discuss the idea of reconsidering the industrial nature of the Manistee Lake Shoreline. If there is a consensus that such a change should be considered, both the Master Plan and the Zoning Ordinance would need to be adjusted.

**Article 70: Historic Overlay District.** I understand that this section of the ordinance was originally intended to foster the preservation of the historic properties in the City. However, the inclusion of a chapter in the Zoning Ordinance is insufficient to enable the historic preservation state and federal tax credits. The City seeks to have a free-standing historic preservation ordinance properly drafted to meet the requirements of State Historic Preservation Office. Thus this Article should be removed from the Zoning Ordinance once a new, general law ordinance is adopted.

**Article 76: Wellhead Protection Overlay District.** This section provides implementation tools for the City's wellhead protection program. The list of affected land uses (Section 7604, C, 5) may generate some appeals, however, due to the parenthetical expressions and explanations included with the text.

**Article 80: Nonconformities.** Section 8003 seems to attempt to outline the types of nonconformities that may be found in the City and the degree of improvement permitted. However, it does not seem to deal with a very common form of nonconformities: The structure that violates setback requirements. The ordinance should provide guidance as to whether and by how much such nonconformities may be expanded.

**Article 86: Special Uses.** Section 8608 permits the City Council to intervene in the special use approval process if a member of the City Council believes the Planning Commission erred in a special use approval. It does not explicitly give the Council authority to intervene in a special use denial. This seems to be an awkward process that could instill added uncertainty

into the process. If the City elects to retain this structure, it is recommended that the City Council be able to intervene in either the approval or the denial of a special use permit.

**Article 94: Site Plan.** As discussed in considering the Northern Lights application, this article may be improved with an explicit provision that permits the Zoning Administrator or Planning Commission to authorize the deferral of some site plan requirements pending agency permitting.

**Article 96: Appeals Board.** The Zoning Board of Appeals (ZBA) has certain authority granted by the City and Village Zoning Act and any additional authorities granted in the Zoning Ordinance. Section 9605 permits the ZBA to determine whether an unlisted use is sufficiently similar to a listed use to allow it. This is known as a "uses similar" clause and is common in most ordinances. However, in most instances this authority is reserved for the Zoning Administrator or Planning Commission, to expedite processing. The Manistee ordinance requires an applicant to detour through the ZBA before submitting an application for a non-listed use. In addition, the ordinance enables the ZBA to hear appeals of any ruling of the Zoning Administrator, the Planning Commission or the City Council. This is an unusual degree of appellate oversight for the ZBA. Many ordinances confine the judgments that may be appealed to the ZBA to interpretation questions. The Manistee ordinance places the ZBA squarely in the policy-making role normally reserved for the Planning Commission and the City Council. In addition, the fact that the ZBA may grant appeals of City Council decisions places both boards in an awkward position. The ZBA is appointed by the Mayor and City Council yet it could overturn a decision they make.

In reviewing the actions of the ZBA over the past five years, it appears that the vast majority of their activities have related to normal dimensional variance requests, so this unusual degree of authority has not been exercised in the recent past. Nevertheless, I would recommend the City reconsider the range of appellate authority given to the ZBA.

As the next step in undertaking the rewrite of the Zoning Ordinance, I suggest that we have a work session with the Planning Commission to go over this memo and the May 30, 2003 list of items of concern prepared by the City. I would like to discuss that topical listing to gain a more complete understanding of the issues and concerns before we embark on crafting new text.