

CITY OF CHARLEVOIX PLANNING COMMISSION MEETING MINUTES
Monday, November 9, 2009 – 7:00 p.m.
210 State Street, City Hall, Council Chambers, Charlevoix, Michigan

A) CALL TO ORDER

The meeting was called to order by Chairman Hess at 7:00 p.m.

B) ROLL CALL

Commissioners Present: Judy Clock, June Cross, Toni Felter, Francis (Brownie) Flanders, John Hess, Bryan Vollmer and D. J. Way, Dan Buday
Commissioners Absent: Larry Boog (excused)
Staff Present: City Planner Mike Spencer

C) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST

Member Vollmer will abstain from voting on the proposed zoning amendments at this meeting. He will become a member of the City Council on November 16th and will vote on the item as a Council member.

D) APPROVAL OF AGENDA

The Commission agreed to approve the agenda as presented.

E) APPROVAL OF OCTOBER 12, 2009 AND AUGUST 10, 2009 MINUTES

The minutes of October 12, 2009 should reflect that Member Way was absent and excused and Member Buday was present.

Motion made by Member Way and seconded by Member Cross to approve the October 12, 2009 minutes with the changes. Motion adopted by unanimous voice vote.

Motion made by Member Flanders and seconded by Member Cross to approve the August 10, 2009 minutes as presented. Motion adopted by unanimous voice vote.

F) CALL FOR PUBLIC COMMENT (Not related to agenda items) None.

G) NEW BUSINESS

1. Discussion on proposed zoning amendments and hearing procedures
 - a. Review of proposed zoning amendments
 - b. Call for public comment

The Commission asked that public comments be permitted as each item is reviewed by the Commission.

Definition of Boat Docking Space

The Commission discussed deleting the definition of boat docking space and replacing it with new language. Chairman Hess asked that language for docking at the end of the dock be added. Planner Spencer stated that minor changes could be made at this time. Chairman Hess suggested defining a method to calculate the number of dock spaces.

Traver Wood discussed parking requirements for docks for residential and/or commercial districts and questioned whether the parking requirements are appropriate in the definition or if the requirements should be in another section. The Commission agreed that the definition would apply to all zone districts.

Mary Eveleigh asked why the definition and the figures on how to determine what a "boat docking space" is are being removed?

The Commission discussed whether footage numbers were needed to determine what a boat docking space is. The Commission asked that the following language be added: "See parking requirements in Article VI and Section 5.32 (10)

Definition of Boat House

The Commission reviewed the proposed amendment and discussed adding language to leave the building open to the rafters. The Commission also discussed adding language to exclude bathrooms, plumbing and kitchen facilities from being located over the water and to limit a boat house to having no more than one bathroom.

Traver Wood stated the DEQ could allow bathrooms over the water or the high water mark in the future.

The Commission discussed the term "exclusive uses". The Commission agreed to leave the bathroom language in the definition and state to the effect that boat houses may contain no more than one bathroom and that a bathrooms shall not be located over the water. Kitchens and laundry facilities should not be permitted in a boat house.

Planner Spencer asked whether the Commission would like to see a separate standard for houses in the Marine Commercial District. The Commission concurred that the definition would not apply in the marine commercial district. Excluding the marine commercial district from the boathouse definition would allow the Marine Commercial District standards to apply to Residential or Condominium structures, etc.

Definition of Building Roof

The Commission reviewed the definition.

Traver Wood asked the Commission to allow architectural elements such as cupolas to be above a building's permitted height.

The Commission generally agreed to amend the text to clarify what items need to be at or below the regulated building height. Cupolas and turrets would be required to adhere to the building height requirement.

Definition of Height of Building

The definition was generally agreed upon.

Definition of Setback

The Commission discussed if a utility right-of-way (easement) could be considered as a setback line. It was agreed to clarify the proposed amendment.

Section 2. Addition to Section 5.176 Accessory Buildings

The Commission discussed how the ordinary high water mark is established in regards to a particular property and whether the language needs to protect the City from the liability of allowing a boat house to be built and having the water rise and submerge parts of the boat house. Planner Spencer will ask the City Attorney review the language before it is presented to City Council.

Section 3, Addition of Sections 5.200(6) and 5.200(7) Building Heights

The Commission reviewed the amendment. A series of diagrams will be included in the proposed ordinance.

Section 4. Amendment of 5.218(13)

The Commission had no comments on the proposed section.

Section 5.222 (8)

The Commission agreed that the lowest portion of the flag be no less than 8' from ground level and the text will be incorporated into Section 5.218 (3)

Section 6. Amendment of 5.272 Zoning Permits

The Commission discussed contradictory language that needs to be revised to address non-conforming lots. The Zoning Administrator cannot issue conditioned or temporary zoning permits. The phrase "or its intended lot" was added to the proposed ordinance. The Commission recommended that the language be forwarded to City Council.

Section 6. Amendment of 5.272 Zoning Permits (1) and (2)

Planner Spencer suggested defining criteria for requiring additional reports so the requirement is not arbitrary. The Commission discussed if these items would be required as a right by use and not only if a development plan is required.

The City Planner will locate language to assure performance without necessarily requiring a performance guarantee, for example it becomes a zoning violation and property owner would be required to remedy the situation.

Planner Spencer would like to move Section 1 to the Development Plan Review Section, delete Section 2 and let the duty to maintain property clause [Section 5.193] address the property in disrepair. The Commission was in general agreement.

The Public Hearing was closed by Commissioner Hess.

c. Motion

Motion made by Commissioner Flanders and seconded by Commissioner Way that the Planning Commission recommends the language as amended be passed on to City Council. Motion adopted by unanimous voice vote. Commissioner Vollmer abstained.

The revised zoning amendment is attached as Exhibit A.

2. Discussion on DeWitt Lot

a. Staff updates

The DeWitt Lot, located at 108 Park Avenue, is owned by the DDA and the house on the lot is 139 years old. Performance Engineers looked at the structural stability of the house. Based partly on their recommendation, the DDA feels the building should be demolished. There is opposition from the

Charlevoix County Historical Society and Historic District Commission. The groups would like to provide an incentive to allow development of the front property with period architecture and improve the parking lot in the rear.

The City has \$130,000 in a parking fund that can be used to improve the lot. The DDA would like to demolish the building and pave the entire lot. Performance Engineers has submitted sketches and a landscape architect is willing to design a plan which will utilize pavers and landscaping. We cannot legally donate the property to a developer, because it was purchased utilizing DDA funds.

Planner Spencer polled the Commission as to their viewpoint on removing the structure and support of utilizing parking fund money to create the parking lot. The DDA has authorized its Executive Director to advertise the building to determine interest. The building could be removed from the property. The building's foundation is bad. The problem is finding someone who wants to invest in the building. If we use DDA money to improve the property, we would create commercial space that would to compete with downtown property owners.

Commissioner Way recommended allowing the Fire Department to utilize the structure for a practice fire. Commissioners Cross and Hess would like to see the Landscape Architect's plans. This project could coincide with the Park Avenue street improvement project this coming spring. The lot would predominately be a free lot, with the possibility of having permit spots too. The Planner will bring more information to the Commission.

3. Planning Commission Vacancy

We have an opening on the Planning Commission. Please contact Mayor Carlson or Planner Spencer if you know of anyone who'd be interested in serving on the Commission. There is an application to serve on a Board or Committee on the City's website.

H) OLD BUSINESS

1. Discussion on Corner Lots

Commissioner Cross feels there have been problems with corner lots, both in facing the front of the home and obtaining an address. There is a potential for homes to have two front lots and we currently have restricted property owners to facing the home in only one direction. The Zoning Ordinance says the front and side yard setbacks have to be the same.

I) STAFF UPDATES AND CORRESPONDENCE

1. Requests for research to be completed by City Planner. None.

J) REQUESTS FOR NEXT MONTH'S AGENDA.

Discussion on Corner Lot Setbacks.

K) ADJOURNMENT

Motion by Commissioner Way and seconded by Commissioner Clock to adjourn meeting. Meeting adjourned at 9:29 p.m.

John Hess, Chairman

Linda Jo A. Weller, Recording Secretary

Carol A. Ochs, City Clerk

Exhibit A

**CITY OF CHARLEVOIX
Ordinance No. ___ of 2009**

AN ORDINANCE TO AMEND TITLE V, PLANNING AND ZONING, CHAPTER 51,
ZONING. MULTIPLE SECTIONS CITED HEREIN.

THE CITY OF CHARLEVOIX ORDAINS:

SECTION 1. Amendment of Sections 5.5, 5.7, and 5.11 Definitions.

The following definitions are hereby repealed:

~~**Boat Docking Space:** The space along a dock or similar structure of sufficient size to dock a recreational boat. Each twenty-six (26) lineal feet of dock space or fraction thereof or sufficient size to dock a recreational boat shall be considered a boat docking space provided that spaces of less than eighteen (18) lineal feet shall be excluded. Dock ends suitable for docking a recreational boat shall be considered a docking space.~~

~~**Boat House:** An accessory building used for the exclusive docking and/or storage of boats and other recreational marine equipment; however excluding structures in the marine commercial district used for principal and accessory uses allowed in that district.~~

~~**Building Roof:** The term shall include all materials and appurtenances covering or above the roof deck of a building, including, but not limited to, air conditioners, antennas, satellite receiving dishes, heating units, elevator housings, skylights, chimneys, plumbing vents, turrets and other similar items. Chimneys and plumbing vents shall not be considered building roof when their extension above the roof deck is required to meet State or local building, plumbing, and/or safety codes and there is no reasonable design alternative, including a rearrangement of floor plans for the building, which would allow for a height reduction of such appurtenances. Turrets and similar architectural features, not including mechanical equipment, chimneys, plumbing vents and similar appurtenances, shall not be considered building roof, for height calculation purposes, when their area calculated from a plan view, does not exceed five (5) percent of the total roof area, calculated from a plan view, and their height above the building roof~~

~~does not exceed fifteen (15) percent of the building height. Any exterior surfaces, exclusive of architectural features, of the building, having an interior angle of seventy-five (75) degrees or greater with the ground floor plain, of a building, shall be considered a wall and not part of a roof.~~

~~**Height of building:** That building height for any structure or portion of a structure (having its ground floor in a single horizontal plane), is the vertical distance measured from the lowest elevation of the finished grade line of the ground around the structure to the highest point of the roof for flat roofs; to the deck line of mansard roofs; and to the mean height level between eaves and ridge for gable, hip, and gambrel roofs. Intrusions below finished grade about the building for stair or window wells, courts or yards, designed in basements or cellars, to accommodate the minimum glazing requirements of the BOCA/National Building Code shall not be considered when calculating building height. Building height for buildings having ground floors in two or more horizontal planes at differing elevations may be calculated as if each ground floor plane area were a separate building."~~

~~**Height of building, overall:** The building height measured from the lowest finished grade about the building to the highest point on the roof."~~

The following definitions are hereby added to read in their entirety as follows:

Boat Docking Space: The space along a dock or similar structure where a boat may be moored. Dock ends suitable for mooring boats shall be considered a boat docking space. (See parking requirements in Article VI and Section 5.32(10))

Boat House: An accessory building used for the exclusive docking and/or storage of boats and other recreational marine equipment. Structures in the marine commercial district used for principal and accessory uses allowed in that district are excluded.

Building Roof: The term shall include all materials and appurtenances that cover or are above the roof deck of a building, including, but not limited to, air conditioners, antennas, satellite receiving dishes, heating units, elevator housings, skylights, chimneys, plumbing vents, cupolas, widows' watches, turrets, and other similar items. For factoring these and other appurtenances into the calculation of building height, see 5.200 Building Heights.

Height of Building: The vertical distance measured to the highest point of the roof for flat roofs; to the deck line for mansard roofs; and to the mean height level between eaves and peak for gable, hip, and gambrel roofs (see Building Roof),

from the specific existing grade line set forth by section 5.200(6) of this ordinance. For calculation of building height, see section 5.200.

Setback: The minimum required horizontal distance, extending upward to the maximum building height and downward to the lowest part of any foundation, from the edge of any structure to the applicable ordinary high water mark, or property line of a lot, within which no buildings or structures may be placed.

SECTION 2. Addition to Section 5.176 Accessory Buildings

Section 5.176(6) is hereby added to read in its entirety as follows:

- (6) Boat houses, as defined by this chapter, shall be considered an accessory building, and shall require a special use permit. Boat houses, as defined by this chapter:
 - i. Shall not be located below the elevation of the ordinary high water mark.
 - ii. Shall be a maximum of 2000 square feet in area.
 - iii. May contain one bathroom, which shall not be located over the water.

SECTION 3. Amendment of 5.188(5) Development Plan Review

Section 5.188 is hereby amended to read in its entirety as follows:

- (5) The City Council may require that a performance guarantee be furnished to ensure compliance with the requirements and conditions imposed under the City's Zoning Ordinance. The amount of the performance guarantee shall be set forth by the City Council, and shall be an amount acceptable to the City in covering the estimated cost of improvements associated with the project for which zoning approval is sought. This performance guarantee may be in the form of a cash deposit, certified check, irrevocable bank letter of credit, or a surety bond, and shall be deposited with the clerk of the City. The performance guarantee shall be deposited at the time of issuance of the permit authorizing the activity or project. The City shall not require the deposit of the performance guarantee before the date on which the City is prepared to issue the permit. The City shall rebate any cash deposits in reasonable proportion to the ratio of work completed on the required improvement as work on the required improvements progresses.

SECTION 4. Addition of Sections 5.200(6) and 5.200(7) Building Heights.

Section 5.200(6) is hereby added to read in its entirety as follows:

- (6) The measurement of maximum allowable building height as it is measured from existing grade is set forth by the following:

- i. On lots with little or no change in grade, building height shall be measured from the centerline grade of the street on which the lot fronts.
- ii. On lots having an average sloping grade of five (5) percent or less, building height shall be measured from the front of the building line of the proposed structure.
- iii. On lots having an average sloping grade of more than five (5) percent, building height shall be measured from the average elevation between front and rear building lines or between side building lines, whichever dimension reflects the greater degree of slope.

Section 5.200(7) is hereby added to read in its entirety as follows:

- (7) In calculating the height of a building, chimneys, plumbing vents, and antennas shall not be considered building roof when their extension above the roof deck is required to meet State or local building, plumbing, and/or safety codes.

Turrets, cupolas, widow's watches, and similar architectural features, not including mechanical equipment, chimneys, plumbing vents and similar appurtenances, shall be considered building roof for height calculation purposes.

Intrusions below grade about the building for stair or window wells, courts or yards, designed in basements or cellars, to accommodate the minimum glazing area requirements of the BOCA/National Building Code shall not be considered when calculating building height. Building height for buildings having ground floors in two (2) or more horizontal planes at differing elevations may be calculated as if each ground floor plane area were a separate building.

Section 5. Amendment of 5.218 Signs Excluded from Permits

Section 5.218(13) is hereby added to read in its entirety as follows:

- (13) One (1) commercial flag per business in the CBD, no larger than 6 square feet and not closer than 8 feet to the ground, which specifically states "Open".

SECTION 6. Amendment of 5.272 Zoning Permits

Section 5.272 is hereby amended to read in its entirety as follows:

No building or structure shall be erected or installed on any such lot, unless or until a zoning permit has been issued by the city for such building or structure.

No permit shall be issued by the City of Charlevoix or any official thereof for the construction, erection, alteration, placing or moving of any building or structure on any parcel of land unless such structure or building is designed and the proposed location on its lot or its intended lot, is arranged to conform with the provisions of this chapter, except that no permit shall be required for alterations which do not result in change in height, floor area, lot coverage, location of walls or other structural alterations.

All applicants for zoning permits shall pay the city clerk a fee according to the schedule as shall be prescribed by the city council. Such fee will be refunded if permit is denied.

SECTION 7. Severability.

No other portion, paragraph or phase of the Code of the City of Charlevoix, Michigan shall be affected by this Ordinance except as to the above sections, and in the event any portion, section or subsection of this Ordinance shall be held invalid for any reason, such invalidation shall not be construed to affect the validity of any other part or portion of this ordinance or of the Code of the City of Charlevoix, Michigan.

SECTION 8. Effective Date.

This Ordinance shall become effective thirty (30) days after its enactment by the City Council.

ADOPTED this ____ day of _____, A.D. 2009

Ordinance No. __-2009 was adopted on the ____ day of _____, 2009, by the Charlevoix City Council as follows: