

VILLAGE OF PINCKNEY

ORDINANCE NO. _____

ORDINANCE AMENDING THE VILLAGE OF PINCKNEY CODE OF ORDINANCES BY AMENDING TITLE XV: LAND USAGE; CHAPTER 152, ZONING; SECTION 152.001, AUTHORITY AND TITLE; SECTION 152.022, DUTIES OF THE ZONING ADMINISTRATOR; SECTION 152.440, AUTHORITY; SECTION 152.441, MEMBERSHIP; SECTION 152.442, POWERS AND DUTIES; SECTION 152.443, PROCEDURES; SECTION 152.444, VARIANCES; AND SECTION 152.445, RULES FOR GRANTING VARIANCES

THE VILLAGE OF PINCKNEY ORDAINS:

Section 1. Title XV, *Land Usage*, Chapter 152, *Zoning*, Section 152.001, *Authority and Title*, of the Village of Pinckney Code of Ordinances, is hereby amended to read as follows:

§152.001 AUTHORITY AND TITLE.

This chapter is adopted pursuant to the City and Village Zoning Act, 1921 PA 207, as amended, (MCL 125.581 *et. seq.*) and subsequently amended pursuant to the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended (MCL 125.3101 *et. seq.*) This chapter shall be known and may be cited as the Village of Pinckney Zoning Ordinance and may hereinafter be referred to as this chapter.

Section 2. Title XV, *Land Usage*, Chapter 152, *Zoning*, Section 152.022, *Duties of the Zoning Administrator*, of the Village of Pinckney Code of Ordinances, is hereby amended to read as follows:

§152.022 DUTIES OF THE ZONING ADMINISTRATOR.

(A) *Administrative duties.*

(1) *Land use applications.* The Zoning Administrator shall receive and review zoning and land use applications for compliance or noncompliance with the provisions of this chapter, and then process the applications as follows:

(a) *Land use permits.* The Zoning Administrator shall review all land use permit applications and approve the land use permit when there is full compliance with this chapter.

(b) *Preliminary site plans.* The Zoning Administrator shall review all applications for preliminary site plan approval, and other matters

that the Planning Commission is required to decide under this chapter, formulate recommendations, refer applications with recommendations to the Planning Commission for determination and notify the applicant, in writing, of any decision of the Planning Commission.

(c) *Final site plans, special land uses and re-zonings.* The Zoning Administrator shall review all applications for final site plan approval, special land use permits, re-zonings and other matters that the Village Council is required to decide under this chapter, formulate recommendations, report to the Planning Commission with recommendations, submit to the Village Council all the applications together with the recommendations of the Planning Commission and notify the applicant, in writing, of any decision of the Village Council.

(d) *Variances and appeals.* The Zoning Administrator shall review all applications for variances and appeals, and other matters that the Zoning Board of Appeals is required to decide under this chapter, formulate recommendations, refer applications with recommendations to the Zoning Board of Appeals for determination and notify the applicant, in writing, of any decision of the Zoning Board of Appeals.

(2) *Public notice.* When the provisions of this chapter require a public hearing, the Zoning Administrator shall inform the Village Clerk of the date, time and substance of the public hearing and the Clerk shall provide public notice of the hearing in accordance with the standards and procedures established in § 152.022 (C).

(3) *Other administrative duties.* The Zoning Administrator shall:

(a) Evaluate proposals for uses in all districts to assure compliance with provisions of this chapter;

(b) Conduct field inspections, surveys and investigations, prepare maps, charts and other materials when necessary or desirable for the administration of this chapter;

(c) Maintain an updated copy of the official zoning map, consistent with the original map to be maintained by the Village Clerk;

(d) Maintain a record of the legal nonconforming uses and structures in the Village for the purpose of implementing §§ 152.415 *et seq.*;

(e) Maintain written records of all actions taken by the Zoning Administrator and keep custody of all records of the Planning Commission and Zoning Board of Appeals; and

(f) Provide the forms necessary for the various land use applications to the Village as required by this chapter.

(B) *Enforcement duties.* There is vested in the Zoning Administrator the duty of enforcing this chapter and the power necessary for the enforcement. In implementing this duty, the Zoning Administrator shall conduct investigations to determine compliance or noncompliance with the provisions of this chapter, and any conditional approvals of the Planning Commission, Village Council or Zoning Board of Appeals and order correction, in writing, of all conditions found to be in violation.

(1) The written orders shall be served personally or by registered mail upon any person, firm, or corporation deemed by the Zoning Administrator to be violating the provisions of this chapter. If the person, firm, or corporation is not the owner of the land on, or the structure in which the violation is deemed to exist, a copy of the order shall be sent by registered mail to the owner of the land or structure. The date of mailing shall be deemed the date of service of any order served by registered mail.

(2) The written orders shall include an order to immediately cease and desist all regulated activities until the development site is brought into compliance.

(3) All violations shall be corrected within 30 days after the order to correct is issued or in the longer period of time, not to exceed six months, as the Zoning Administrator shall deem necessary and appropriate. A violation not corrected within this period shall be reported to the Village Attorney, who is hereby authorized to and may initiate procedures to eliminate the violation (see § 152.999). The Zoning Administrator may otherwise issue municipal civil infraction citations for any violations.

(C) *Public Notice.* When notice of a Village action is required, such notice shall comply with the Michigan Zoning Enabling Act, P.A. 110 of 2006, MCL 125.3101 *et seq.*, the Open Meetings Act, MCL 15.261 *et seq.*, and the provisions of this section.

(1) *Responsibility.* When the provisions of this Ordinance or the Michigan Zoning Enabling Act requires that public notice be provided, the Zoning Administrator or other person specifically designated by the Village Council shall be responsible for preparing the notice, having it published in a newspaper of general circulation in the Village, and mailed or delivered as provided in this section.

(2) *Content.* All required mail, personal and newspaper notices shall include the following information:

(a) *Nature of the request.* The notice shall identify whether the request is for a rezoning, text amendment, special land use, planned unit development, variance, appeal, ordinance interpretation, or other purpose.

(b) *Information regarding the subject property.* The notice shall provide the following information with regard to the property that is the subject of the request, herein referred to as the “subject property.” The notice shall list all existing street addresses relative to the subject property(s). Street addresses do not need to be created and listed if no such addresses currently exist relative to the subject property. If there are no street addresses, other means of identification may be used such as a tax parcel identification number; identifying the nearest cross streets; and/or including a map showing the location of the subject property. Street addresses do not need to be listed when eleven (11) or more adjacent properties are proposed for a zoning amendment, or rezoning, or when the request is for an ordinance interpretation not involving a specific property.

(c) *Time and place of hearing.* The notice shall indicate the date, time, and place of any public hearing(s).

(d) *Time and place where proposed text and maps are located.* The notice shall indicate the time and place where any proposed zoning ordinance text and any maps may be examined.

(e) *Written comments.* The notice shall include a statement describing when and where written comments will be received concerning the request, and that the public may appear at the public hearing in person or by counsel.

(f) *Handicap access.* The notice shall provide information concerning how handicap access will be accommodated if the meeting facility is not handicap accessible.

(3) *Publication of notice in newspaper.* When notice of a public hearing is required, the Zoning Administrator shall cause such notice to be published in a newspaper of general circulation within the Village not less than fifteen (15) days before the scheduled date of the public hearing.

(4) *Notice by mail or personal delivery.*

(a) *General.* When the provisions of this Ordinance or state law require that notice be provided by mail or personal delivery, such notice shall be provided as follows:

(i) To the owner(s) of the subject property and to the applicant, if the applicant is different than the owner(s) of the property.

(ii) If real property is the subject of the notice, to all persons to whom real property is assessed within three hundred (300) feet of the subject property, and to all occupants of structures within three hundred (300) feet of the subject property, regardless of whether the property or occupant is located within the boundaries of the Village of Pinckney.

(iii) Notification to owners and occupants (but not applicants) shall not be required for any zoning amendment requests involving eleven (11) or more adjacent properties, or an ordinance interpretation request or for appeals that do not involve a specific property.

(iv) If the name of the occupant is not known, the term "occupant" may be used in making notification required hereunder.

(v) Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses, or organizations, one (1) occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.

(vi) Each gas, electric, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the Clerk of the Village for the purpose of receiving notices of public hearing.

(vii) To all other individuals, organizations, firms, or corporations, which have registered in accordance with §152.022(C)(4)(a)(vi).

(b) *Procedures regarding notice.* Notice shall be deemed mailed upon its deposit with the United States Postal Service, properly addressed and mailed first class with postage fully prepaid. The Zoning Administrator shall prepare a list of property owners, registrants and others to whom notice was mailed, as well as anyone else to whom notice was delivered otherwise than by mail.

(c) *Timing.* Unless otherwise provided in the Michigan Zoning Enabling Act, MCL 125.3101 *et seq.*, notice of a public hearing shall be provided, whether via mail or in person, not less than fifteen (15) days before the scheduled date of the public hearing.

(5) *Conformance to court decree.* Any amendment for the purpose of conforming a provision of the zoning ordinance to a decree of a court of competent jurisdiction as to any specific lands may be adopted by the Village Council and the notice of the adopted amendment published without referring the amendment to any board or agency provided for under the Michigan Zoning Enabling Act, MCL 125.3101 *et seq.*

Section 3. Title XV, *Land Usage*, Chapter 152, *Zoning*, Section 152.440, *Authority*, of the Village of Pinckney Code of Ordinances, is hereby amended to read as follows:

§152.440 AUTHORITY.

There is hereby established a Zoning Board of Appeals, the membership, powers and duties of which are prescribed in Act 110 of the Public Acts of 2006, being MCL 125.3101 *et seq.*, as amended. The Zoning Board of Appeals shall have the power to interpret, vary, and determine the application of the Zoning Ordinance so that the purposes and intent of the chapter are met and substantial justice is maintained.

Section 4. Title XV, *Land Usage*, Chapter 152, *Zoning*, Section 152.441, *Membership*, of the Village of Pinckney Code of Ordinances, is hereby amended to read as follows:

§152.441 MEMBERSHIP, REMOVAL, TERMS.

(A) The Village Council of the Village of Pinckney shall act as the Zoning Board of Appeals in accordance with the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended (MCL 125.3101 *et seq.*).

(B) The Village President shall serve as the Chairperson of the Zoning Board of Appeals and the President Pro Tem shall serve as the Zoning Board of Appeal's Vice-Chairperson.

Section 5. Title XV, *Land Usage*, Chapter 152, *Zoning*, Section 152.442, *Powers and Duties*, of the Village of Pinckney Code of Ordinances, is hereby amended to read as follows:

§152.442 POWERS AND DUTIES.

The Zoning Board of Appeals, in addition to the general powers and duties conferred upon it by Public Act 110 of 2006, being MCL 125.3101 *et seq.*, as amended, in specific cases and subject to appropriate conditions and safeguards, shall have the following duties:

(A) *Appeals.* The Zoning Board of Appeals shall hear and decide questions that arise in the administration of the Zoning Ordinance. The Zoning Board of Appeals shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by the Zoning Administrator or other official or body duly charged with the enforcement of the Zoning Ordinance. This shall include appeals of decisions related to a re-zoning, special land use, residential open space development or planned development.

(B) *Variances.* The Zoning Board of Appeals shall hear and decide requests for variances from the requirements of this chapter where there is practical difficulty or unnecessary hardship imposed on the applicant in carrying out the strict letter of this chapter, in accordance with § 152.444. The Zoning Board of Appeals may grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the Zoning Ordinance or to any other nonuse-related standard in the Zoning Ordinance. The Zoning Board of Appeals may grant variances from uses of land subject to a vote of 2/3 of the members of the Zoning Board of Appeals to approve a use variance.

(C) *Interpretation and other duties.* The Zoning Board of Appeals shall also have the power to act on any other matters where this chapter provides for administrative review, interpretation, variance, or exception, including the following:

(1) *Land uses.* Interpretation of permitted uses and special land uses in a zoning district, to determine if a specific use is included within a more general land use category. In making this determination, the Zoning Board of Appeals shall consider the following:

(a) The similarity and compatibility of the use in question to those uses listed in the zoning district;

(b) The conformance of the use in question to the stated goals of the district, the larger Zoning Ordinance and the Village Master Plan; and

(c) Whether or not the use in question is specifically listed in any other zoning district.

(2) *Zoning map.* The Zoning Board of Appeals shall hear and decide questions regarding the interpretation of the Village zoning map.

(3) *Records.* The Zoning Board of Appeals shall keep a record of all decisions interpreting this chapter, including zoning map and land use interpretations listed above. The Zoning Ordinance shall be amended to incorporate these decisions as appropriate.

(D) *Limitations.* The Zoning Board of Appeals, notwithstanding any terms herein to the contrary, shall not have the power to change the zoning district classification of any property before the proposed re-zoning is first decided on by the Village Council, make any change in the terms or intent of this chapter, prohibit a use that is permitted in this chapter or determine the validity of this chapter.

Section 6. Title XV, *Land Usage*, Chapter 152, *Zoning*, Section 152.443, *Procedures*, of the Village of Pinckney Code of Ordinances, is hereby amended to read as follows:

§152.443 PROCEDURES.

(A) *Application.* Any request for action by the Zoning Board of Appeals shall be submitted in writing to the Zoning Administrator on a standard Village form. The applications shall be accompanied by the necessary review fee and all relevant plans, studies and other information, which shall be made a part of the public record.

(B) *Appeals.* An appeal may be taken by a person aggrieved, or by an officer, department, board or bureau of the Village.

(1) An appeal of a determination by the Zoning Administrator or other duly authorized enforcing agent or body shall be made within 30 days of the date of permit approval or denial.

(2) The Zoning Administrator shall transmit to the Zoning Board of Appeals all documents, or direct copies thereof, constituting the record from which the appealed action was taken.

(3) An appeal stays all proceedings, and thereupon all changes in the status quo of the property concerned shall constitute a violation of this chapter; except that the Zoning Administrator may certify to the Zoning Board of Appeals of Appeals, after the notice of the appeal has been filed, that for

reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. If such a certification is filed, the proceedings shall only be stayed by a restraining order, which may be granted by the Zoning Board of Appeals of Appeals or on application to the Circuit Court when due cause can be shown.

(C) *Meetings.* All meetings of the Zoning Board of Appeals shall be open to the public and shall fully comply with the Open Meetings Act, Public Act 267 of 1976, being MCL §§ 15.261 through 15.275, as amended. Meetings shall be held at the call of the Chairperson and at the other times as the Zoning Board of Appeals shall specify in its rules and procedures. The Zoning Board of Appeals shall not conduct business unless a majority of the Zoning Board of Appeals is present. The business of the Zoning Board of Appeals shall be conducted in accordance with its adopted by-laws. The Village Attorney shall act as legal counsel for the Zoning Board of Appeals and shall be present at all meetings upon request of the Zoning Board of Appeals.

(D) *Public notice.* The Zoning Board of Appeals shall fix a reasonable time for a public hearing of an appeal or variance and shall notify the applicant of the time and place of the hearing. Notice of the public hearing shall be given in accordance with the provisions of § 152.022. Upon the hearing, a party may appear in person or by agent or by attorney.

(E) *Minutes.* Minutes of all proceedings shall be recorded, which shall be filed in the office of the Clerk of the Village Council. The minutes shall contain evidence and data relevant to each case considered, together with the separate votes of the members and the final disposition of each case.

(F) *Action.* A concurring vote of the majority of the Zoning Board of Appeals shall be necessary to reverse an order, requirement, decision or determination of the Zoning Administrator or other administrative official or body, to decide in favor of an applicant on any matter upon which the Zoning Board of Appeals is required to pass under this chapter, or to grant a variance from the Zoning Ordinance, except a concurring vote of two-thirds of the Zoning Board of Appeals shall be required to grant a use variance as provided for under § 152.444.

A member of the Village Council who is also a member of the Village Planning Commission shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning commission or Village Council. However, the member may consider and vote on other unrelated matters involving the same property.

(G) *Decision.* The Zoning Board of Appeals shall return a decision upon each case within 60 days of application, unless additional time is agreed to by the applicant.

(1) The Zoning Board of Appeals may impose reasonable conditions upon an affirmative decision. The conditions may include those necessary to prevent negative impacts on public infrastructure, natural resources, adjacent properties, social and economic well-being and public health, safety and welfare.

(2) A decision of the Zoning Board of Appeals shall not become final until ten (10) days from the date of the decision. Any appeal from a decision of the Zoning Board of Appeals to the circuit court shall be filed within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the Chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of its decision.

(3) If no decision is made regarding an appeal at the advertised public hearing, disposition of the case must be set to a date certain at that time, and this date must be clearly stated in the meeting minutes. If no date certain is set and duly noted in the public record, notice of the next meeting at which the case will be considered shall be provided as required under division (D) above.

Section 7. Title XV, *Land Usage*, Chapter 152, *Zoning*, Section 152.444, *Variances*, of the Village of Pinckney Code of Ordinances, is hereby amended to read as follows:

§ 152.444 VARIANCES.

Where owing to special conditions, a literal enforcement of the provisions of the Zoning Ordinance would involve practical difficulties or cause unnecessary hardship within the meaning of this Article, the Zoning Board of Appeals shall have the power upon appeal in specific cases to authorize such variation or modification of the provisions of the Zoning Ordinance with such conditions and safeguards as it may determine as may be in harmony with the spirit of this Chapter and so that public safety and welfare be secured and substantial justice done. No such variance or modification of the provisions of the Zoning Ordinance shall be granted unless it appears that all of the following facts and conditions exist:

(A) The alleged practical difficulties or hardships, or both, are exceptional and peculiar to the subject property or intended use of the property, that do not apply generally to other properties or class of uses in the same district;

(B) Failure to grant the variance will deprive the property owner of his or her reasonable use as enjoyed by other property owners in the same district and vicinity. This shall include substantially more than mere inconvenience and/or inability to attain a higher financial return;

(C) Allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this chapter, the individual hardships that will be suffered by failure to grant the variance, and the rights of others whose property would be affected by approval of the variance;

(D) The variance will be consistent with the purpose and intent of this chapter, will not adversely affect the purpose or objectives of the master plan of the Village, will not be contrary to the public interest, will not injure the public or private rights of others and will not diminish the value of surrounding properties;

(E) The conditions and circumstances on which the variance request is based have not been self-created by the applicant or predecessors in title; and

(F) The variance will not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and the same zoning district, and shall be the minimum variance that will make possible a reasonable use of the land or structure.

Section 8. Title XV, *Land Usage*, Chapter 152, *Zoning*, Section 152.445, *Rules for Granting Variances*, of the Village of Pinckney Code of Ordinances, is hereby amended to read as follows:

§ 152.445 RULES FOR GRANTING VARIANCES.

The following rules shall be applied in the granting of variances:

(A) In granting a variance, the Zoning Board of Appeals shall specify, in writing, to the applicant the conditions of approval that will in its judgment ensure the purpose and intent of this chapter are met. The breach of any conditions shall automatically invalidate the permit granted.

(B) The Zoning Board of Appeals may, upon review and public hearing, and unless good cause can be shown, declare a variance null and void if construction authorized by the variance has not commenced within one year after the date of approval and been pursued diligently to completion.

(C) No application for a variance that has been denied wholly or in part by the Zoning Board of Appeals shall be resubmitted for a period of one year from the date of last denial, except on the grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Zoning Board of Appeals to be valid.

(D) In authorizing any variance, the Zoning Board of Appeals may require that a performance bond be furnished to insure compliance with the requirements, specifications and conditions imposed (see § 152.026).

Section 9. Repealer Clause. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 10. Savings Clause. This Ordinance does not affect rights and duties matured, penalties that were incurred, and proceedings that were begun, before its effective date.

Section 11. Validity and Severability. Should any portion of this Ordinance be found invalid for any reason, such a holding shall not be construed as affecting the validity of the remaining portions of this Ordinance.

Section 12. Effective Date. This Ordinance shall be effective twenty (20) days from and after its publication.

Rebecca Foster, Village President

Amy Salowitz, Village Clerk

Village Council Member _____ offered the foregoing Ordinance, and moved its adoption. The motion was seconded by Village Council Member _____, and upon being put to a vote, the vote was as follows:

Rebecca A. Foster, President	_____
Linda E. Lavey, Trustee	_____
Robert MacDonald, Trustee	_____
Kurt W. Mohrmann, Trustee	_____
Thomas F. Pais, Trustee	_____
Bobby J. Stone, Trustee	_____
Barry M. White, Trustee	_____

The President thereupon declared this Ordinance approved and adopted by the Village Council of the Village of Pinckney this ~~23rd~~ day of ~~March~~, 2009.

I hereby certify that the foregoing constitutes a true and complete copy of Ordinance No. _____ adopted by the Village Council of the Village of Pinckney, County of Livingston, Michigan, at a regular meeting held on ~~March 23~~, 2009.

Amy Salowitz, Village Clerk

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