

**VILLAGE OF PAW PAW  
ZONING BOARD OF APPEALS**

**September 1, 2011**

PRESENT: Acting Chairperson Pioch, Barb Carpenter, Marcos Flores, George Kolosar

ABSENT: Chairperson Hindenach

ALSO PRESENT: Larry Nielsen, Village Manager and Rebecca Harvey, Village Planning Consultant

CALL TO ORDER

Acting Chairperson Pioch called the meeting to order at 6:13 p.m.

APPROVAL OF AGENDA

The agenda was then reviewed wherein it was noted that the consideration of Draft #1 of the Zoning Board of Appeals ByLaws would be postponed until the next meeting of the Board. The agenda was approved as amended.

APPROVAL OF MINUTES

The next matter to come before the Board was consideration of the proposed minutes of the May 2, 2011 Zoning Board of Appeals meeting. Mr. Flores moved to approve the minutes as presented. Ms. Carpenter seconded the motion. The motion carried unanimously.

VARIANCE REQUEST – *Leisure Living*

The next matter to come before the Board was the request of Neil Kraay, Leisure Living Management for variance approval from the 350 square foot minimum dwelling unit area requirement applicable to 'housing for the elderly' set forth in Section 42-367 (16) c., Zoning Ordinance. The subject property is located on the west side of Hazen Street, to the rear of Vineyard Apartments, and is within the "R-M" Multiple Family Residential District.

Neil Kraay and Mickey Bittner were present on behalf of the application. Mr. Kraay stated that he has been involved in the construction of 28 similar facilities in Michigan and that the specific design proposed has been used in the last six (6) projects. He noted that the last project constructed was located in Allegan and that the floor plan/building design has been well received.

Mr. Kraay indicated that he understands the intent of the Village's standard but that today's 'assisted living facility' is not the same product envisioned by that standard. He added that the design of the proposed facility is a national product and is representative of the industry today.

Mr. Kraay stated that only the six (6) studio units proposed would not meet the minimum dwelling unit standard but that these units provide a needed choice as it relates to cost and spatial needs. He explained that the studio unit is provided 277 square feet, which exceeds the State's minimum dwelling unit standard of 80 square feet.

In response to Board questions, it was noted that the State standard is a minimum standard and that it is permissible for the Village to have a more restrictive standard than the State. It was also determined that the history (ie. date of adoption, intent) of the existing 350 square foot standard was unclear. However, it was noted by the Board that the merit of the standard was not a question appropriately before them.

No further public comment was offered on the matter.

The Board proceeded with a review of the variance criteria set forth in Section 42-66., noting the following findings:

1. The subject site does not represent a unique physical circumstance that prevents compliance with the minimum dwelling unit size standard.
2. The subject property is afforded reasonable use and the proposed assisted living facility can be built on the site in compliance with applicable standards with minimal redesign required.
3. The grant of the requested variance would not necessarily permit the development of the site in a manner harmful to adjacent properties. Further, the proposed facility will require licensure from the State wherein matters of public health and safety as they relate to the adequacy of the dwelling units will be addressed.

It was noted, however, that the intent of the minimum dwelling unit size standard is to ensure that safe and adequate living area exists and that density levels are commensurate with the character of the district. The

RM District currently permits a minimum dwelling unit area of 500-650 square feet, including kitchen and sanitary facilities.

4. It was noted that the applicant maintains that the current Ordinance standard of 350 square feet is outdated and does not accommodate new trends in the assisted living industry or the senior living options now available.

As such, an amendment to the Zoning Ordinance would be in order if it is determined that the current standard is no longer relevant rather than a grant of a variance.

As a point of order, Mr. Kraay advised that Phase 2 of the project would include additional studio units and that variance relief from the dwelling unit size standard for Phase 2 is also requested at this time.

General Board discussion ensued wherein it was confirmed that the Board has the option of requesting Planning Commission consideration of an amendment to the zoning text. Further, it was noted that the process for Planning Commission consideration of a text amendment could occur simultaneous to the Board's review of a special land use permit and site plan.

Ms. Pioch then moved to deny the requested variance from the 350 square foot minimum dwelling unit area requirement applicable to 'housing for the elderly' based upon the findings of the Board on the variance criteria set forth in Section 42-66., Zoning Ordinance. Mr. Flores seconded the motion. The motion carried unanimously.

Ms. Pioch stated that, based upon the Board's discussion of the application, they would like to request Planning Commission consideration of an amendment to the Zoning Ordinance on this matter. She opined that the text amendment process is the appropriate mechanism to respond to the applicant's argument that the standard lacks merit and that such consideration should be forthcoming in recognition of stated industry trends and in anticipation of future requests for relief from the existing standard.

## NEW BUSINESS

It was noted that, consistent with the approval of the agenda, the review of the draft Zoning Board of Appeals ByLaws has been postponed to the next meeting of the Board.

OLD BUSINESS

No Old Business was presented for consideration.

MEMBER COMMENTS

No comments were offered.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 6:55 p.m.