

ARTICLE 22 - ADMINISTRATION

Section 22.1 - General.

Except where otherwise stated, the provisions shall be administered by a Zoning Administrator who shall be appointed by the Village Council, for a term of 2 years, and who shall be subject to re-appointment by the Village Council not more than 8 times.

The Zoning Administrator shall record all nonconforming uses existing at the effective date of this Ordinance for the purpose of carrying out the provisions of the Section "Non-conformities"

The Zoning Administrator shall under no circumstances be permitted to make changes to this Ordinance or to vary the terms of this Ordinance in carrying out his/her duties as Zoning Administrator.

The Zoning Administrator shall not refuse to issue a Permit when conditions imposed by this Ordinance are complied with by the applicant despite violations of contracts, such as covenants or private agreements which may occur upon the granting of said Permit.

Section 22.2 - Zoning Administrator and Zoning Administration Subcommittee.

- (1) Designation: The Zoning Administrator and Zoning administration sub-committee shall administer this ordinance as provided for herein. The Zoning administration subcommittee shall be chosen from the membership of the Village of Pellston Planning Commission.
- (2) Duties: The Zoning Administrator and Zoning administration sub-committee such deputies or assistants as have been, or shall be, duly appointed shall enforce the Zoning Regulations and in addition thereto, and in furtherance of such authority, shall:
 - (a) Register all nonconforming uses when they are identified.
 - (b) Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this Ordinance.
 - (c) Forward, to the Village Ordinance Enforcement Officer violation notices that require compliance within ten (10) days, and advise suspected violators of right of appeal.
 - (d) Require that all construction or work of any type be stopped when such work is not in compliance with this Ordinance.
 - (e) Forward, to the Planning Commission, applications for amendments to the Zoning Ordinance text or map and special uses.

- (f) Forward, to the Zoning Board of Appeals, applications for appeals and variances.
- (g) Forward, to the Village Council, applications for temporary buildings, structures and uses of land.
- (h) Review all cases of encroachment into required yards.
- (i) Interpret the Zoning Regulations when questions arise, subject to review by the Planning Commission.
- (j) Determine which uses, though not contained by name in a zoning district list of permitted uses, are of the same general character and permit their establishment.
- (k) Initiate an examination of the administrative record of variances and appeals and make a report to the Village Council not less frequently than once a year.

Section 22.3 - Zoning Permit.

- (1) Before proceeding with the erection, alteration, repair moving, or removing of any building or part thereof, an owner or his authorized agent shall obtain a permit from the Zoning Administrator, signed by the Zoning Administrator and one of more members of the Zoning administration subcommittee. The applicant for a permit must file with his request a set of plans and written specifications sufficient to clearly and fully indicate the nature of the contemplative work and the kind and quality materials to be used therein, together with an estimated cost. Drawings shall clearly indicate the size of structural members, walls and openings, the position of the building on the site with reference to property and street lines and adjacent buildings, and such other information as may be necessary to provide for the enforcement of these regulations. It shall be the duty of all lot owners to have accurately located all corners and boundaries of their property prior to building thereon with a current registered survey.
- (2) A record of such applications and plans shall be kept in the office of the Zoning Administrator for such period of time as the Village Council deems necessary.
- (3) When the plans submitted have been found to conform with the requirements of this Ordinance, the Zoning Administrator shall issue a permit, when countersigned by a member of the Zoning administration subcommittee. He shall inform the applicant that this permit does not do away with the necessity for permits showing conformity with the Building Code, Sanitary Code, and other requirements of the Count of Emmet and State of Michigan, and that no construction shall be commenced until these other legal requirements have been fully met.

- (4) The Zoning Administrator, and a member of the Zoning administration subcommittee shall inspect the building once during construction and shall make a final inspection of all buildings after completion, before occupancy begins, upon receiving notice from the owner, contractor or his/her agent that said building is ready for such final inspection.
- (5) Permits for structures on which work has not started within 12 months following the date of issue, and permits for structures upon which work has been abandoned for a period of 12 months, shall lapse and cease to be in effect.

Section 22.4 - Certificate of Occupancy and Compliance.

No vacant land shall be occupied or used, and no building hereafter erected or altered shall be occupied, used or changed in use until a Certificate of Occupancy and Compliance shall be issued by the Zoning Administrator, stating that the building or proposed use of the building and premises complies with the Village building and health laws and ordinances. In addition, all other inspections must be complete and signed for. Certificates of Occupancy and Compliance shall be applied for with the application for a building permit and shall be used within ten (10) days after the construction or alteration of such building shall have been substantially completed.

Section 22.5 - Fees.

Fees for inspection and issuance of permits or copies thereof required or issued under the provisions of this Ordinance may be collected by the Zoning Administrator in advance of issuance. The amount of such fees shall be established by the Village Council.

Section 22.6 - Violation and Penalties.

- (1) Buildings erected, altered, razed, or converted, or uses carried on in violation of any provision of this Article, local ordinances or regulations made pursuant, to P.A. 110 of 2006, as amended declared to be nuisance per se. The Court shall order such nuisance abated, and the owner and/or agent, in charge of such building or land shall be adjudged guilty of maintaining a nuisance per se.
- (2) For any and every violation of the provisions of this Article, the owner, agent, architect, builder, lessee, or tenant of the land or building or part thereof where violation has been committed or a misdemeanor and the owner, agent, architect, builder, or any person who commits, takes part, or assists in such violation of any of the provisions of this Article, or any person who maintains any building or land in or on which such violation exists, shall be guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be punished by a fine of not more than \$100 for each offense, or shall be punished by imprisonment in jail for a period not to exceed 90 days, or both such fine and imprisonment at the discretion of the court. In case the

owner, lessee, or tenant is an unincorporated association or a non-profit membership corporation, every member of such association or corporation shall be deemed guilty of a misdemeanor as herein provided and subject to the penalties herein specified. Each day that a violation is permitted to exist shall constitute a separate offense.

- (3) The Village or any interested party may apply to any court of competent jurisdiction to restrain any person, firm, or corporation from such disobedience or threatened violation, notwithstanding such disobedience or violation may be punishable by a fine or imprisonment as above provided.

Section 22.7 - Appeal.

Refer to Section 22.9.

Section 22.8 - Changes and Amendments.

- (1) The regulations and provisions stated in the text of this Ordinance and the boundaries of zoning districts shown on the official zoning map of the Village of Pellston may be amended, supplemented, or changed by the Village Council in accordance with P.A. 110 of 2006 as amended (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*) hereinafter referred to as the "Zoning Act". The Village Council may appoint a commission to recommend in the first instance and/or to amend the boundaries of districts and appropriate regulations to be enforced in the districts. If the Council appoints such a commission, the commission shall make a tentative report and hold at least one public hearing prior to submission of its final report to the Council. The final report shall include a summary of the comments submitted at the public hearing. The Village Council may hold additional public hearings if it considers it necessary. Where a commission has been appointed to recommend zoning requirements, the Village Council shall not in the first instance neither determine boundaries of districts nor impose regulations until after the final report of the commission.
- (2) Initiation of Amendments. Proposals for amendments, supplements, or changes may be initiated by the Village Council on its own motion, or by petition of one or more owners of property to be affected by the proposed amendment.
- (3) Public Notification: All applications for development approval requiring a public hearing shall comply with the Michigan Zoning Enabling Act, PA 110 of 2006 and the other provisions of this Section with regard to public notification.
 - (a) Responsibility: When the provisions of this Ordinance or the Michigan Zoning Enabling Act require that notice be published, the Zoning Administrator shall be responsible for preparing the content of the notice, having it published in a newspaper of general circulation in the County of Emmet and mailed or delivered as provided in this Section.

- (b) Content: All mail, personal and newspaper notices for public hearings shall:
- (i) Describe nature of the request: Identify whether the request is for a rezoning, text amendment, special land use, planned unit development, variance, appeal, ordinance interpretation or other purpose.
 - (ii) Location: Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the subject property. Street addresses do not need to be created and listed if no such addresses currently exist within the 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 street, or including a map showing the location of the property. No street addresses must be listed when eleven (11) or more adjacent properties are proposed for rezoning, or when the request is for an ordinance interpretation not involving a specific property.
 - (iii) When and where the request will be considered: Indicate the date, time and place of the public hearing(s).
 - (iv) Written comments: Include a statement describing when and where written comments will be received concerning the request. Include a statement that the public may appear at the public hearing in person or by counsel.
 - (v) Handicap access: Information concerning how handicap access will be accommodated if the meeting facility is not handicap accessible.
- (c) Personal and Mailed Notice
- (i) General: When the provisions of this Ordinance or state law require that personal or mailed notice be provided, notice shall be provided to:
 - (A) The owner of property for which approval is being considered, and the applicant, if different than the owner(s) of the property.
 - (B) Except for rezoning requests involving eleven (11) or more adjacent properties or an ordinance interpretation request that does not involve a specific property; to all persons to whom real property is addressed within three hundred (300) feet of the boundary of the property subject to the request, regardless of whether the property or occupant is located within the boundaries of the Village of Pellston. If the name of the occupant is not known, the term "occupant" may be used in making notification. 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.

- (C) All neighborhood organizations, public utility companies, railroads and other persons which have requested to receive notice pursuant to Section X.Y.2, registration to Receive Notice by Mail.
- (D) Other governmental units or infrastructure agencies within one mile of the property involved in the application.

- (ii) Notice by mail/affidavit: Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, postage paid. The Zoning Administrator shall prepare a list of property owners and registrants to whom notice was mailed, as well as of anyone to whom personal notice was delivered.

- (d) Timing of Notice: Unless otherwise provided in the Michigan Zoning Enabling Act, PA 110 in 2006, or this Ordinance where applicable, notice of a public hearing shall be provided as follows:

- (i) For a public hearing on an application for a rezoning, text amendment, special land use, planned unit development, variance, appeal, or ordinance interpretation: not less than fifteen (15) days before the date the application will be considered for approval. [This means it us be published in a newspaper of general circulation and for those receiving personal notice, received by mail or personal notice, not less than 15 days before the hearing.]
- (ii) For any other public hearing required by this Ordinance: 15 days before the date the application will be considered for approval.

(4) Amendment Procedure.

- (a) Petition to Village Planning Commission. Each petition by one or more owners for an amendment shall be submitted by application to the Village Clerk on a standard form provided. A fee as established by the Village Council shall be paid at the time of application to cover costs of necessary advertising for public hearing, for the use of a standard amendment sign, and investigation of the amendment request. No part of such fee shall be returnable to a petitioner. The Village Clerk shall transmit the application to the Village Planning Commission.

- (b) Public Hearing. After deliberations on any proposal, the Village Council or Planning Commission appointed to recommend zoning regulations shall conduct at least one public hearing before any regulation shall become effective. No less than 15 days notice of the time and place of such public hearing shall first be published in an official paper or paper of general circulation in the Village and not less than 15 days notice of the time and place of such public hearing shall first be given by registered United States mail to each public utility company and to each railroad company owning or operating any public utility or railroad within the districts or zones affected that registers its name and mailing address with the Village Clerk for the purpose of receiving the notice. An affidavit of mailing shall be maintained. A hearing shall be granted to an interested person at the time and place specified on the notice. If an individual property or several adjacent properties are proposed for rezoning, notice of the proposed rezoning and hearing shall be given to the owners of the property in question at least fifteen (15) days before the hearing.
- (c) Action by Village Council. After the public hearing, and after receipt of the commission's report (where a commission has been appointed), the Village Council may adopt the Ordinance and/or the Village Zoning map with or without amendments or refer the Ordinance and/or Map again to the commission (where a commission has been appointed) for further report. The Village Council may hold additional public hearings it considers such hearings necessary. It may refer the same again to the Planning Commission for further report, in accordance with the provisions and procedures of P.A. 110 of 2006, as amended.
- (d) Whenever the Village Council shall receive a protest petition against a proposed amendment, before final Village Council action on the amendment, signed by the requisite number of landowners as set forth in P.A. 110 of 2006, as amended, then such amendment, supplement, modification or change shall not be passed except by three-fourths vote of the Village Council.
- (e) Re-submittal. No application for a rezoning which has been denied by the Village Council shall be resubmitted for a period of one (1) year from the date of the last denial, except on ground or newly discovered evidence or proof of change conditions found upon inspection by the Village Council to be valid.
- (f) Notice. Following adoption of a zoning ordinance and subsequent amendments by the Village Council, one (1) notice of adoption shall be published in a newspaper of general circulation in the Village within fifteen (15) days after adoption. The notice of adoption shall contain the affective date of the ordinance and the place and time where a copy of the ordinance may be purchased or inspected. In the case of a newly adopted zoning ordinance, the notice shall state: "A zoning ordinance regulating the development and use of land has been adopted by the

Village Council of the Village of Pellston". In the case of an amendment to an existing ordinance, the notice shall contain either a summary of the regulatory effect of the amendment including the geographic area affected, or the text of the amendment

Section 22.9 – Zoning Board of Appeals.

- (1) Zoning Board of Appeals Membership. There is hereby established a Zoning Board of Appeals, to be known as the Pellston Zoning Board of Appeals, and to consist of five (5) members. The members of the Zoning Board of Appeals shall be selected by the Village Council. None of the members shall be in any office of the Village, elected or appointed, except for the following: one (1) member may be a member of the Council but may not be appointed Chairman of the Zoning Board of Appeals; and one member shall be a member of the Planning Commission and shall not be the same as the Council member and may be appointed as Chairman. Of the five (5) first so selected, two (2) shall hold office one (1) year, two (2) for (2) years, and one (1) for three (3) years. Their respective successors shall each hold office for a term of three (3) years. The Board shall annually select its Chairman. The Village Clerk shall serve as Secretary of the Board.
 - (a) A member of the Zoning Board of Appeals may be removed by the Village Council for misfeasance, malfeasance, or nonfeasance in office, upon written charges and after public hearing a member shall disqualify him or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify him or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.
- (2) Meetings of the Zoning Board of Appeals. All meetings shall be open to the public and shall be held in compliance with Act NO. 276 of the Public Acts of 1976 being section 15.261 to 15.275 of the Michigan Compiled Laws. The board shall adopt its own rules or procedure and keep minutes of its proceedings, showing the action taken upon each matter considered. A writing prepared, owned, used, in possession of or refrained by the Zoning Board of Appeals in performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being section 15.231 to 15.246 of the Michigan Compiled Laws. Meetings of the Board shall be held at such times and places as may be designated by the Chairman. Public notice of the time, date and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. The Zoning Administrator is authorized to request, through the Chairman, such meetings at any time when matters are pending requiring attention by the Board. In addition, the Zoning Administrator may request such meetings whenever:
 - (a) A meeting is to be held as previously determined by the Board.
 - (b) The Zoning Administrator is so instructed by the Chairman, or

- (c) The Zoning Administrator is so instructed in writing by any other three (3) members of the Board. Three (3) members shall constitute a quorum.
- (3) Powers and Duties of the Zoning Board of Appeals.
- (a) The Zoning Board of Appeals referred to in this section as "Board" shall fix a reasonable time for the hearing of the appeal within 30 days from the date of filing thereof, and give due notice thereof to the parties, and to the owners of record of real estate situated within 300 feet of the premises in question, and to the occupants of all single and two-family dwellings, within 300 feet of the premises in question, such notice to be delivered personally or by mail addressed to the respective owners and tenants at the address given in the last assessment roll, according to the then records of the Village Assessor, not less than 10 days prior to the date of the hearing. If the tenant's name is not known, the term "occupant" may be used. The Board shall decide the same within a reasonable time. At the hearing any person may appear in person or by agent or attorney. An appeal stays all proceedings in furtherance of the action appealed from except as set forth in P.A. 110 of 2006, as amended.
 - (b) The board shall hear and decide appeals do novo and review on appeal any order, requirement, decision or determination made by the Zoning Administrator in enforcement or application of this Article, and upon such appeal may, reverse or affirm, wholly or partly or modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. The Zoning Board of Appeals may impose conditions, upon an affirmative decision. The concurring vote of 2/3 of the members of the Board shall be necessary to grant a variance from uses of land permitted in an ordinance. The concurring vote of a majority of the members of the Board shall be necessary to reverse or modify any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the appellant upon any matter which is required to pass, or to effect any variation in this Article.
- (4) Re-filing of Appeal. An owner of property or his authorized agent shall not file an appeal for a zoning variance affecting the same parcel more often than once every six (6) months. An exception this rule may be made in those cases where the Zoning Board of Appeals determines that:
- (a) the conditions affecting the property have changed substantially; or
 - (b) the nature of the request has changed substantially, thereby justifying the repetition before (6) months have elapsed from the date of the previous petition.

- (5) Jurisdiction. Nothing herein contained shall be construed to give or grant to the Zoning Board of Appeals the power or authority to alter or change the Zoning Ordinance or the Zoning Map, such power and authority being reserved to the Village Council in the manner here in before provided by law.
- (6) Variance Time Limitation.
 - (a) No order of the Zoning Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than two (2) years, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.
 - (b) No order of the Zoning Board of Appeals is permitting a use of a building or premises shall be valid for a period longer than two (2) years unless such use is established within such period; provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for said erection or alteration is started and proceeds to completion in accordance with the terms of such permit.
- (7) Appeals to the Zoning Board of Appeals
 - (a) A demand for a zoning appeal is received by the zoning administrator. Appeals can be filed by:
 - (i) a person aggrieved, or
 - (ii) an officer, department, board, or bureau of the state or local unit of government.
 - (b) The Zoning Board of Appeals shall have the authority to hear appeals concerning:
 - (i) All questions that arise in the administration of the zoning ordinance, including interpretation of the zoning map.
 - (ii) All administrative orders, requirements, decision or determination made by an administrative official or body charged with enforcement of the zoning ordinance.
 - (iii) All decisions of the zoning administrator.
 - (iv) All decisions concerning site plan review.
 - (c) Upon receipt of a demand for appeal, the administrator will review the demand for appeal to insure it is complete and the fee is paid.

- (i) If the application is not complete, the administrator will return the application to the applicant with a letter that specifies the additional material required.
 - (ii) If the application is complete, the administrator and chairman of the Zoning Board of Appeals shall establish a date to hold a hearing on the appeal.
- (d) The appeal stays all proceedings in furtherance of the action appealed. Unless the body or officer from whom the appeal is taken certifies to the zoning board of appeals that by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril of life or property, in which case proceedings may be stayed by a restraining order issued by the zoning board of appeals or a circuit court.
- (e) The notice shall be given not less than 15 days before the date of the hearing on a proposed zoning amendment.
 - (i) Notices shall be sent to:
 - (A) The individual demanding the appeal.
 - (B) The owner (or other owners) of the property, if different.
 - (C) If the appeal or variance involves the 11 adjacent properties: the owners of all real property within 300 feet of the boundary for the property for which the approval has been requested, as shown by the latest assessment roll, regardless of whether the owner and property is located in the zoning jurisdiction or not.
 - (D) If the appeal or variance involves less than 11 adjacent properties: occupants of any structures within 300 feet of the boundary for the property for which the approval has been requested, regardless of whether the owner and property is located in the zoning jurisdiction or not.
 - (E) The general public by publication in a newspaper which circulates in the County of Emmet.
 - (F) Members of the planning commission or legislative body and planning commission if the hearing is being held by the legislative body.
 - (ii) The notice shall include:
 - (A) The nature of the zoning amendment being requested.

- (B) The property(s) for which the appeal or variance has been made.
 - (C) If the appeal or variance involves less than 11 adjacent properties, also a listing of all existing street addresses within the property(s) which is(are) subject of the zoning amendment. (Street addresses do not need to be created and listed if no such addresses currently exist. If there are no street addresses another means of identification may be used.)
 - (D) The location where the demand for appeal can be viewed and copied prior to the date of the zoning amendment hearing.
 - (E) The date, time and location of when the hearing before the Zoning Board of Appeals will take place.
 - (F) The address at which written comments should be directed prior to the hearing.
 - (G) For members of the Zoning Board of Appeals only, a copy of the demand for appeal, the entire record on the case, the staff report, and supporting documents in the record.
- (f) The Zoning Board of Appeals shall hold a hearing on the demand for appeal.
- (i) Representation at Hearing- Upon the hearing any party or parties may appear in person or by agent or by attorney.
 - (ii) Standards for Variance Decisions by the Zoning Board of Appeals: The Zoning Board of Appeals shall base its decisions on variances from the strict requirements of this Ordinance so that the spirit of the Ordinance is observed, public safety secured, and substantial justice done based on the following standards:
 - (A) For Dimensional Variances: A dimensional variance may be granted by the Zoning Board of Appeals only in cases where the applicant demonstrates in the official record of the public hearing that practical difficulty exists by showing all of the following:
 - (A.1) That the need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shaper, water, or topography and is not due to the applicants personal or economic difficulty.

- (A.2) That the need for the requested variance is not the result of actions of the property owner or previous property owners (self created).
 - (A.3) That strict compliance with regulations governing area, setback, frontage, height, bulk, density, or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.
 - (A.4) That the requested variance is the minimum variance necessary to do substantial justice to the applicant as well as to other property owners in the district.
 - (A.5) That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.
- (B) For Use Variances: Under no circumstances shall the Zoning Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

Section 22.10 - Planning Commission.

- (1) Creation and Membership: The Planning Commission, as previously established under the provisions of the State of Michigan City and Village Planning Act., is the Planning Commission referred to in this Ordinance.
- (2) Jurisdiction: The Planning Commission shall discharge the following duties and responsibilities under this Ordinance:
 - (a) Review all applications for amendments to the Zoning Ordinance (text or map), in the manner prescribed by and subject to the standards established herein and report findings and recommendations to the Village Council in accordance with the of this Ordinance.
 - (b) Review all applications for special uses, in the manner prescribed by and subject to the standards established herein, and report findings and recommendations to the Village Council.
 - (c) Advise the Village Council on all matters referred to it or upon which is it required to review under this Ordinance.

- (d) Receive and consider the report of the Village Zoning Administrator as related to the effectiveness of this Ordinance and report the Commission's conclusions and recommendations to the Village council not less frequently than once a year.
 - (e) Initiate amendments to the Zoning Ordinance, text or map.
 - (f) Review and update of the Comprehensive Plan no less than every five years. Text or Map.
 - (g) Implement and uphold Village of Pellston Comprehensive Plan as it may be amended.
- (3) Recommendations of the Planning Commission: All recommendations of the Commission on any applications for amendments to the Zoning Ordinance text or map or any application for special use or on any other matter, shall in all instances, be advisory in nature and shall be subject to final consideration, evaluation and determination by the Village Council.