

AN ORDINANCE TO AMEND THE ZONING ORDINANCE NO. 121
OF THE CITY OF LUNA PIER TO PROVIDE FOR THE REGULATIONS
FOR CELLULAR TOWERS, SPECIAL LAND USES AND AMENDMENTS TO
VARIANCE PROVISIONS.

THE CITY OF LUNA PIER ORDAINS THAT:

SECTION 201 A. DEFINITIONS:

Id the following highlighted sentence:

Essential Services: The erection, construction, alteration or maintenance by public utilities or municipal department of underground, surface, or overhead gas, electrical, steam, fuel or water transmission or distribution systems, collection, communication, supply or disposal systems, including poles, wires, mains, drains, sewer pipes, conduits, cables, fire alarm and police call boxes, traffic signals and hydrants in connection herewith, but not including buildings which are necessary for the furnishing of adequate service to the township by such utilities or municipal departments for the general health, safety or welfare. Wireless communication towers, devices and facilities are not defined as an essential service.

SECTION 1607 USES NOT OTHERWISE INCLUDED WITHIN A SPECIFIC USE DISTRICT

Add to a new paragraph (3)

- (3) Towers and antennae for cellular telephone transmission may be permitted in I-1 and I-2 Districts and on municipally owned properties subject to the following conditions:
- a. Cellular towers and antennae shall not exceed one hundred and fifty (150) feet in height, measured from the grade at the base of the tower.
 - b. The base of the tower shall have a minimum setback of not less than the height of the tower from any property line.
 - c. If located on the same zoning lot with another permitted use, such tower and any other structures connected therewith shall not be located in a front a yard or side yard abutting a street.
 - d. Cellular telephone antennae and supporting structures shall be permitted to be placed on the roofs of buildings subject to the following conditions:
 - (1) The principal use is a conforming use and the building is a conforming structure.
 - (2) The antenna shall not exceed the height of its supporting structure by more than twelve (12) feet.
 - (3) The top of the supporting structure may exceed the maximum height of the district in which it is located by not more than ten (10) feet.
 - (4) The supporting structure shall be set back from the outermost vertical wall or parapet of the building a distance equal to at least two (2) times the height of such structure.
 - e. The Planning Commission may permit such use after finding that the criteria for approving special land uses are met as well as the following:

- (1) The petitioner demonstrates that operating requirements necessitate locating within the City and within the district, and that location on existing towers or buildings in district where such facilities are permitted are not available.
- (2) That, in the opinion of the Planning Commission, nearby residential areas will not be negatively influenced by the location of the tower.
- (3) That the height of the tower and antennae not exceed one hundred and fifty (150) feet.
- f. Any cellular tower and antennae that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such tower or antennae shall remove same within ninety (90) days of receipt of notice from the City notifying the owner of such abandonment. Failure to remove an abandoned antennae or tower within said ninety (90) days shall be grounds to remove the tower or antennae at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

ADD A NEW SECTION 1618.

Sec. 1618 Special Land Uses:

1. Whenever a special land use, namely, a use permitted subject to a special conditions, is requested pursuant to sections 402, 502, 703, 802, 1002, 1202 and 1607 of this ordinance, then the provisions and conditions of this section shall apply in addition to the provisions and conditions of the other aforesaid sections.
2. The planning commission shall have the authority to grant special land use permits and to attach conditions to a permit.
3. Application for a special land use permit shall be made by filing the application form, required information, and required fee with the building official. The fee shall be set by resolution by the City Council, except that no fee shall be required for a special land use permit application for the construction of a single-family residence or of any governmental body or agency. No part of the fee shall be returnable to the applicant. The building official shall transmit a copy of the application and submitted information to the planning commission.
4. An application for a special land use permit shall contain the following information:
 - a. The applicant's name, address, and telephone number.
 - b. The names and addresses of all record owners and proof of ownership.
 - c. The applicant's interest in the property and if the applicant is not the fee-simple owner, the owner's signed authorization for the application.
 - d. Legal description, address, and tax parcel number of the property.
 - e. A scaled and accurate survey drawing correlated with a legal description and showing all existing buildings, drives, and other improvements.
 - f. A detailed description of the proposed use.
 - g. A site plan which shall meet all the requirements of Section 1615 herein.

5. The planning commission shall review the particular circumstances and facts of each proposed use in terms of the following standards and required findings, and with respect to any additional standards set forth in the ordinance. The planning commission shall find and report adequate data, information, and evidence showing that the proposed uses meets all required standards and:
- a. Will be harmonious, and in accordance with the objectives, intent, and purpose of this ordinance; and
 - b. Will be compatible with a natural environment and existing and future land uses in the vicinity; and
 - c. Will be compatible with the City's master plans; and
 - d. Will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage ways and structures, refuse disposal, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately for such services; and
 - e. Will not be detrimental, hazardous, or disturbing to existing or future neighboring uses, persons, property, or the public welfare; and
 - f. Will not create additional requirements at public costs for public facilities and services that will be detrimental to the economic welfare of the community.
6. The planning commission may approve, approve with conditions, or deny special land use permit application. The planning commission's decision, the basis for their decisions, and all conditions imposed, shall be described in a written statement which shall be made a part of the record of the meeting.
7. In granting a special land use permit, the planning commission shall impose any conditions it deems necessary to achieve the objective and standards of this ordinance, the standards of the City and Village Zoning Act, Act No. 207 of the Public Acts of Michigan of 1921 amended, and the public health, safety, and welfare of the City. Failure to comply with such conditions shall be considered a violation of the ordinance. An approved special land use permit, shall run with the parcel in the approval and shall remain unchanged except upon the consent of the planning commission. Any such changes shall be entered into City records and recorded in the minutes of the planning commission meeting at which the action occurred. The procedures required for an original application shall be followed with respect to any proposed changes.
8. An application for special land use permit which has been denied wholly or in part by the planning commission should not be resubmitted for a period of 365 days from the date of denial, except on grounds of new evidence or proof of changed conditions found by the planning commission to be valid.
9. A special conditional use approval runs with the land until such time as the use designated in the "approval" is changed by the occupant. The land then reverts back to only the uses permitted in that specific zoning district.
10. The decision of the planning commission with respect to a special land use permit shall not be appealable to the board of appeals.

CHANGE SECTION 1804 BY ADDING A NEW PARAGRAPH C. USE VARIANCE, ADDING THE TITLE NON USE VARIANCE TO B. AND CHANGE EXISTING PARAGRAPH C. TO PARAGRAPH D.

b. Non Use Variance

To authorize, upon an appeal, a variance from the strict application of the provisions of this Ordinance where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this Ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance. In granting a variance the Board may attach thereto such conditions regarding the location, character, and other features of the proposed uses as it may deem reasonable in furtherance of the purpose of this Ordinance. In granting a variance, the Board shall state the grounds upon which it justifies the granting of a variance.

c. Use Variance Application Requirements

In Addition to the information required for other variance requests, an application for a use variance shall include a plan drawn to scale detailing the specific use and improvements proposed by the applicant, and a summary of the facts which support each of the following conclusions:

- (a) Applicant's property cannot be used for the purposes permitted in the zoning district.
- (b) Applicant's plight is due to unique circumstances peculiar to his property and not to general neighborhood conditions.
- (c) Applicant's suggested use would not alter the essential character of the area.
- (d) Applicant's problem is not self-created.

At the end of each statement ((a) through (d)) identify all persons who will testify at the hearing relative to the respective conclusion (and if any person is to be offered as an expert witness, include with the application a resume which shows the education and experience of such person within the particular area of expertise).

(2) Pre-Hearing Conference

Prior to the scheduling of a hearing, the applicant shall contact the City for the purpose of scheduling a pre-hearing conference. The purpose of the pre-hearing conference shall to:

- (a) Review the procedure for the hearing and identify all persons who will testify (directly or through affidavit) and the evidence to be offered on behalf of the applicant.
- (b) Attempt to secure a statement of agreed-upon facts to be used to narrow the matters of dispute and shorten the hearing.
- (c) Explore a means of providing relief to the applicant by way of non-use variance from the zoning board of appeals, or other relief which may require action by persons or bodies other than the zoning board of appeals which will afford an adequate remedy for the applicant.
- (d) Discuss the need, desirability, and the terms of providing, a verbatim record of the hearing.

3. Hearing Procedure

The applicant shall have the burden of proof. In order to be entitled to relief, the applicant must demonstrate each of the four factors set forth in paragraphs (a) through (d) of c. above.

- (a) The applicant may present witnesses, including the applicant, or may submit affidavits, for the purpose of attempting to prove facts or conclusions. The applicant shall be provided with the opportunity to present all testimony and evidence proposed to be presented at the pre-hearing conference, either through witnesses or affidavits, however, the chairperson of the zoning board of appeals may restrict testimony and evidence which would result in unreasonable duplication. In addition, by motion made on its own or at the request of a person at the hearing, the zoning board of appeals may require that presence of any witness who has offered either testimony by affidavit on a material question of fact or testimony of an expert nature, with the view of permitting members of the zoning board of appeals to ask questions of such witnesses.
- (b) At the conclusion of applicant's presentation, interested person attending the hearing shall be provided with the opportunity to present testimony and evidence in the same manner and subject to requiring the presence and questioning of witnesses, as provided above for the applicant.
- (c) When interested persons have completed their presentations, at the same meeting and/or at the adjourned meeting date, testimony and evidence may be presented on behalf of the community in the same manner, and subject to requiring the presence and questioning of witnesses, as provided above for the applicant.
- (d) If testimony or evidence has been offered by or on behalf of interested persons and/or the community, the applicant shall have the opportunity to present rebuttal, restricted to responding to the points raised by interested persons and the community. The manner of presenting witnesses, and requirement of this presence and questioning, shall be the same as provided above for the applicant's principal case.
- (e) At the hearing, the zoning board of appeals may determine to establish other rules of procedure, such as meeting hours on any given day, procedure for presentations by interested persons and/or on behalf of the community, or other rules found to be necessary or appropriate by the board.
- (f) If a hearing is not completed at a given meeting within the time period allowed by the zoning board of appeals, the Board shall adjourn the hearing to a date certain for continuation.

(4) Decision of the Zoning Board of Appeals

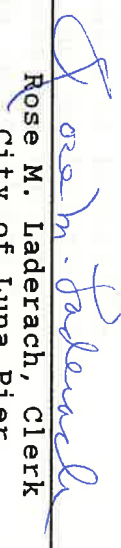
- (a) The zoning board of appeals may deem it appropriate in any given case to provide an opportunity for anyone presenting testimony or evidence to submit proposed findings of fact and conclusions.
- (b) At the conclusion of the hearing, the zoning board of appeals may make its decision at that meeting, or it may adjourn the hearing to a new date for the purpose of reviewing the testimony and evidence, and reviewing proposed findings and conclusions submitted by hearing participants, in preparation for making its decision.

- (c) If the zoning board of appeals determines to grant variance relief, it shall be the minimum relief required to allow reasonable use of the property, while maintaining the essential character of the area. Such relief may be in the form of one or more non-use variances and/or in the form of a use variance. The motion may include conditions that are authorized by law.
- (d) If the zoning board of appeals adopts a motion to grant variance relief, such motion may be made as a tentative grant of relief, subject to review by the planning commission, planning director/consultant, engineer or other person or official with expertise, with a view of obtaining recommendations on any conditions that may be relevant and authorized by law, and for the further purpose on ensuring that the grant of relief would not violate applicable law. If such a tentative grant of relief is approved, the zoning board of appeals shall request the completion of all reviews by other boards of persons by a specific date, so that relief may be expeditiously finalized.
- d. Exceptions and Special Approvals (language to remain the same)

This Ordinance shall become effective ten (10) days after a summary has been published as provided by law.

I, Rose M. Laderach, Clerk, City of Luna Pier, do hereby certify, that the foregoing Ordinance was duly adopted at the Regular Meeting of the Luna Pier City Council held on June 25, 1998.

DATED: June 26, 1998


Rose M. Laderach, Clerk
City of Luna Pier

ADOPTED: 6/25/98

PUBLISHED: 7/13/98

EFFECTIVE: 7/23/98