



City Hall  
208 North First Avenue  
Alpena, Michigan 49707  
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## *Planning & Development*

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### **AGENDA**

ZONING BOARD OF APPEALS

January 26, 2022, 5:00 p.m.

Regular Meeting, Council Chambers and Virtual

**You may access the meeting from your computer, tablet or smartphone:**

<https://www.gotomeet.me/CityofAlpena/zoning-board-of-appeals>

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United States: +1 (571) 317-3122

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CALL TO ORDER:

ROLL CALL:

INTRODUCTION OF STAFF AND NEW MEMBERS:

APPROVAL OF 2022 MEETING SCHEDULE:

ELECTION OF OFFICERS:

APPROVAL OF MINUTES: Meeting April 28, 2021

PUBLIC HEARING AND ZBA ACTION:

UNFINISHED BUSINESS:

NEW BUSINESS:

1. Review recent Ordinances passed
2. Review of Current By-Laws

COMMUNICATIONS:

REPORTS:

PUBLIC COMMENT:

ADJOURNMENT:



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*Planning, Development, & Zoning*

**CITY OF ALPENA ZONING BOARD OF APPEALS**

**2022 Schedule**

Regular meetings of the ZBA are held the last Wednesday of each month at 5:00 P.M. in Council Chambers at City Hall, unless otherwise indicated (\*).

<b>MEETING DATE</b>	<b>COMPLETE APPLICATION DEADLINE</b>	<b>NEWSPAPER PUBLICATION DEADLINE</b>
Wednesday January 26	Wednesday January 5	Tuesday January 11
Wednesday February 23	Wednesday February 2	Tuesday February 8
Wednesday March 23*	Wednesday March 2	Tuesday March 8
Wednesday April 27	Wednesday April 6	Tuesday April 12
Wednesday May 25	Wednesday May 4	Tuesday May 10
Wednesday June 29	Wednesday June 8	Tuesday June 14
Wednesday July 27	Wednesday July 6	Tuesday July 12
Wednesday August 31	Wednesday August 10	Tuesday August 16
Wednesday September 28	Wednesday September 7	Tuesday September 13
Wednesday October 26	Wednesday October 5	Tuesday October 11
Wednesday November 30	Wednesday November 9	Tuesday November 15
Wednesday December 21*	Wednesday November 30	Tuesday December 6

Approved by the City of Alpena ZBA at its regular meeting on January 26<sup>th</sup>, 2022.

  
 \_\_\_\_\_  
 xxxx, Chair

MINUTES  
ZONING BOARD OF APPEALS

April 28, 2021  
COUNCIL CHAMBERS, CITY HALL

CALL TO ORDER:

Member Lewis called the Zoning Board of Appeals to order at 5:08 p.m.

ROLL CALL:

Present: Bray, Broers, Guest, Lewis

Absent: Keller

STAFF:

Donald Gilmet (Contractual Staff), Kathleen Sauve (Recording Secretary)

Staff member Donald Gilmet stated that Michael Lamble has resigned from the board.

Member Lewis suggested they postpone the election of officers until the next meeting.

Ayes: All to table the election of officers until the next meeting.

Public Hearing of Case ZBA 21-02

Donald Gilmet, Staff, presented the variance as follows: **In Case ZBA 21-02, Keith Titus, 415 South First Ave, Alpena, MI 49707.** The applicant has applied for a variance to extend their deck to within 7 feet of their front property line and construct an aluminum ramp that will extend 3 feet, 9 inches into an easement located on the neighboring property located at 409 South First Ave, Alpena, MI 49707.

**Property Address: 415 S. First Ave.**

Notices were sent to all adjoining property owners within 300 feet of the subject property.

To authorize a variance, the Board shall find that all the following conditions are met:

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
2. Strict compliance with the regulations governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
3. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give substantial relief to the property owner and be more consistent with justice to other property owners.
4. The need for the variance was not created by the property owner or previous property owners (self-created).
5. That the requested variance will not cause an adverse impact on the surrounding property, property values, or the use and enjoyment of the property in the neighborhood or zoning district and will not impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City of Alpena.

Staff evaluation of the five conditions relative to this petition is as follows:

1. Due to the narrow shape of the lot a variance is necessary to allow the owner of the home proper access to and from the subject residence.
2. The property in its current state unreasonably prevents the owner from entering and exiting the residence due to mobility issues. The addition of a deck, and access ramp are necessary to allow the owner to enter and exit the residence.
3. The proposed request does appear to do substantial justice to the neighbors. One of the adjacent properties are owned by the applicant's daughter, and the granting of variance will not negatively impact the other neighbors.
4. The need for a variance was not created by the owner, or previous owners as the restriction was created by the Zoning Ordinance.

5. The proposed request will not create an adverse impact on the neighborhood. The applicant simply wishes to extend the existing deck and add a ramp so he may enter and exit the residence without the assistance of outside sources.

Staff did receive two other comments via mail and email regarding the proposed variance. The first comment was in support of the project, with a neighbor stating that they have seen the difficulty the applicant has with accessibility and that the variance is much needed and far overdo. The second comment received was in opposition to the variance. The commenter stated that granting the variance will, "not fit into the balance of the street." In addition, the second comment also stated that the sides, and rear of the home present a viable option, and that they are not in agreement with the proposed construction.

In granting a variance, the Board may attach conditions regarding the location, character, and other features of the proposed project 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 said variance.

#### Staff Observations:

Staff recommends that the variance be approved with conditions. The condition that is recommend by staff is that the easement be granted and recorded before the construction may begin.

#### DISCUSSION BY BOARD MEMBERS:

Member Broers (also hired contractor to complete the work) stated that the front enclosed porch is only 4 feet by 4 feet, which then leads into the house with a rise of 7 5/8 inches, which is impossible to pass with Mr. Titus' electric wheelchair. He further explains that is the reason for the elevation increase of the current enclosed porch.

Member Guest questions the removal of the front stairs, and if they are removed, will they be replaced. Broers states that for now it will just be the ramp in place for access to the home; however, at some point when the ramp is removed, there will be stairs built facing toward the rear of the home in the same location.

#### PUBLIC COMMENT:

Sara Bode, of 401 South Sixth Ave., is the granddaughter and one of the current caregivers of Mr. Titus and is appearing to represent the applicant. She states it is impossible to get her grandfather out of the house without ambulance assistance. She believes it is a necessity to be able to get him out of the house to his appointments and to get fresh air at this stage in his life in his current condition. She states that it would mean a lot to Mr. Titus, his family and his

caregivers to be able have a sense of freedom and life and to be able to get out of his home more easily.

With no further comments, Member Lewis closed the public hearing.

Before the vote, Member Broers addressed the board. He explained that because he is there representing the applicant as well as being the contractor hired for the work to be done, he recuses himself from voting, as there is a conflict of interest.

Member Lewis states that Broers will not be voting, and it will be up to the rest of the board members.

Member Bray made a motion to grant the variance with the condition as stated by Staff.

Member Guest seconded the motion.

Roll:

Ayes: Bray, Guest, Lewis

Nays: none

Motion passed: 3-0

The variance to construct a deck with a wheelchair ramp was granted.

#### NEW BUSINESS:

Member Guest made a motion to approve the minutes from the March 31, 2021 meeting as printed.

Member Bray seconded the motion.

Ayes: All in favor to approve the minutes as printed.

The minutes from the March 31, 2021 meeting were approved.

#### COMMUNICATIONS:

There were no communications.

#### ADJOURNMENT:

Motion to adjourn made by Lewis.

Motion seconded by Bray.

With no other business to discuss, Staff member Gilmet adjourned the meeting at 5:32 p.m.

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Alan Guest, Secretary

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Chairman



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**Planning, Development, & Zoning**

**To:** Alpena Municipal Council  
**From:** Montiel Birmingham, Director  
**cc:** Rachel Smolinski, City Manager  
**Date:** November 11, 2021  
**RE:** Zoning Ordinance Amendments

Content covered and approved during the Planning Commission meeting on November 9<sup>th</sup>, 2021, included two amendments to the current zoning ordinance. The amendments are as follows:

1. Ordinance No. 21-465 – Food Trucks, Food Truck Parks, Veterinary Clinics
  - a. Food Trucks and Food Truck Parks were added to the following zones as Permitted by Right, with Supplemental Regulations:

TABLE OF PERMITTED USES & SPECIAL LAND USES																	
R = Permitted by right	R1	R2	RT	RM 1	RM 2	OS1	CBD	CCD	B1	B2	B3	I1	I2	P1	WD	CR	PR
S = Permitted with a Special Use Permit																	
<b>ACCOMMODATION AND FOOD SERVICES</b>																	
<i>Food Trucks/Food Truck Parks</i>							R*	R*	R*	R*	R*	R*	R*		R*		

- b. Veterinary Services/Animal Clinics/Animal Hospitals were added to zones CCD and B2 as Permitted with a Special Use Permit per the below.

TABLE OF PERMITTED USES & SPECIAL LAND USES																	
R = Permitted by right	R1	R2	RT	RM 1	RM 2	OS1	CBD	CCD	B1	B2	B3	I1	I2	P1	WD	CR	PR
S = Permitted with a Special Use Permit																	
<b>AGRICULTURE/FOREST PRODUCTS</b>																	
<i>Veterinary Services/Animal Clinics/Animal Hospitals</i>								S		S	S	R					

2. Ordinance No. 21-466 – Rezoned parcel at 1010 South 11<sup>th</sup> Ave from RM-2 to B-1
  - a. Parcel is located on the corner of 11<sup>th</sup> and Park and is adjacent to property currently zoned as B-1

Denise Cline, NEMCOG, is available online to review the amendments and City Attorney, Bill Pfeifer will conduct the first reading of each ordinance. The ordinance changes shall take effect upon the expiration of seven days after the publication of the notice of adoption.





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## Planning, Development, & Zoning

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**To:** Alpena Municipal Council  
**From:** Montiel Birmingham, Director  
**cc:** Rachel Smolinski, City Manager  
**Date:** December 15, 2021  
**RE:** Zoning Ordinance Amendments

Content covered and approved during the Planning Commission meeting on December 14<sup>th</sup>, 2021, included amendments to the current zoning ordinance. The amendment is as follows:

### Ordinance No. 21-468 – Modification to Rezoning Standards and Addition of Conditional Rezoning

#### 1. Modification to Rezoning Standards

- a. Addition of “goals and objectives” to point A.
- b. Removal of points G and I
  - i. G - *Are there substantial reasons why the property cannot be used in accordance with its present zoning classifications?*
    1. **Reason for Removal:** A property can always be used for some use within its present zoning district. However, this statement fails to consider what use might be needed or desired or practical for the location.
  - ii. I - *Are there sites nearby already properly zoned that can be used for the intended purposes?*
    1. **Reason for Removal:** The answer to this is almost always “yes,” but the person that wants to do a specific use might not own those nearby properties, or they might not be available for sale. So, whether there are nearby properties can be irrelevant.

#### 2. Addition of Conditional Rezoning

- a. **Reason:** A Use Variance is very difficult to receive because the owner must prove that they cannot use the land for any other use under the current zoning classification. Conditional Rezoning allows for flexibility in zoning given specific conditions tied to the property that are appropriate and consistent with the goals and objectives of the Comprehensive Plan.
- b. **Summary**
  - i. A landowner may request a Rezone with an offer of conditions
  - ii. Offer of conditions may not authorize uses or developments not permitted in the requested new zoning district
  - iii. Offer of conditions should bear a reasonable and rational relationship to the property for which rezoning is requested
  - iv. Recommendation from Planning Commission to Rezone with Offer of Conditions would go to City Council for approval



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## ***Planning, Development, & Zoning***

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- v. A Statement of Conditions shall
  - 1. be incorporated into the Zoning Ordinance and Zoning Map
  - 2. be recordable with the Register of Deeds
  - 3. run with the land and is binding upon successor owners of the land
  - 4. contain a notarized signature of all owners attesting to the conditions
- vi. Building/use of land must begin within one year of rezone or revert back to former rezoning classification
- vii. Council has the ability to extend the one-year requirement under specific conditions
- viii. Future rezoning may cancel out the Statement of Conditions
- ix. City of Alpena continues to have the right to rezone

Montiel Birmingham is available to review the amendments and City Attorney, Bill Pfeifer will conduct the first reading of the ordinance. The ordinance changes shall take effect upon the expiration of seven days after the publication of the notice of adoption.



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**Planning, Development, & Zoning**

**To:** Alpena Municipal Council  
**From:** Montiel Birmingham, Director  
**cc:** Rachel Smolinski, City Manager  
**Date:** January 12, 2022  
**RE:** Zoning Ordinance Amendments

Content covered and approved during the Planning Commission meeting on January 11<sup>th</sup>, 2022, included two amendments to the current zoning ordinance. The amendments are as follows:

1. Ordinance No. 22-470 – Adult Use Marihuana
  - a. Adult Use Marihuana was added to the following zones as Permitted with a Special Use Permit and Supplemental Regulations.
  - b. Marihuana Microbusiness is a 6th establishment type that was not previously present for medical.

TABLE OF PERMITTED USES & SPECIAL LAND USES																	
R = Permitted by right S = Permitted with a Special Use Permit	R1	R2	RT	RM 1	RM 2	OS1	CBD	CCD	B1	B2	B3	I1	I2	P1	WD	CR	PR
<b>COMMERCIAL/BUSINESS/SERVICE</b>																	
<i>Adult Use Marihuana Establishments:</i>																	
<i>Marihuana Growers</i>													S*	S*			
<i>Marihuana Processors</i>													S*	S*			
<i>Marihuana Retailers</i>						S*		S*		S*	S*	S*	S*				
<i>Marihuana Microbusiness</i>						S*		S*		S*	S*	S*	S*				
<i>Marihuana Safety Compliance Facilities</i>						S*		S*		S*	S*	S*	S*				
<i>Marihuana Secure Transporters</i>													S*	S*			

2. Ordinance No. 22-469 – Rezoned parcel at 124 E Clark St R-2 to R-T
  - a. Parcel is located to the south of the Salvation Army on 2nd Ave (Zone OS-1)

Montiel Birmingham is available to review the amendments and City Attorney, Bill Pfeifer will conduct the first reading of each ordinance. The ordinance changes shall take effect upon the expiration of seven days after the publication of the notice of adoption.



ADOPTED: June 15, 1989

**CITY OF ALPENA**  
**Zoning Board of Appeals Bylaws**

The following Rules of Procedure are hereby adopted by the Zoning Board of Appeals to facilitate the performance of its duties as outlined in Section 5 of PA 207 of 1921, as amended.

**Section 1.0 Powers, Duties, Responsibilities and Matters to be Considered.**

- 1.1 The Board shall have the power to:
- (A) Act on matters where the Ordinance provides for an interpretation or appeal and to authorize, with or without conditions, a variance as defined by State law and the Ordinance, and to subpoena witnesses and evidence as may be necessary.
- 1.2
- (A) The Board shall not have power to:  
Repeal or amend the Ordinance text, nor to amend the zoning map, nor to permit prohibited uses in a zoning district.
  - (B) Waive the 30 day time limit for filing an appeal from the decision of the Building Inspector.
  - (C) Decline consideration and action on any matter designated by the Zoning Ordinance to be included in the Board's jurisdiction; or such other matters as the City Council or any Administrative Official of the City shall find advisable or essential.
- 1.3 Prior to a final decision on any matter, the Board shall conduct a careful study of all the pertinent facts. In consideration of all matters the Board must ensure that the spirit and intent of the Ordinance is observed, public safety secured, and that substantial justice is done.

**Section 2.0 Appointment, Tenure and Elections**

- 2.1 Seven (7) Board members shall be appointed by the City Council; Three (3) members for one (1) year, two (2) members for two (2) years, two (2) members for three (3) years: Thereafter each member to hold office for the full three (3) year term.
- 2.2 Vacancies shall be filled by Council appointment for the remainder of the unexpired term.
- 2.3 The Board shall annually in May elect its own chairperson, vice-chair, and secretary. Newly elected members shall

immediately take and hold office for the remainder of the term or until their successors are elected.

- 2.4 The chairperson shall not hold that position for more than three (3) consecutive years, and then must relinquish the chair for at least one (1) year before being considered for re-election to chairperson office.

### **Section 3.0 Duties of Officers**

- 3.1 The Chair presides at all meetings, appoints committees and performs such other duties as outlined in the Ordinance.
- 3.2 The Vice-Chair acts in the capacity of the Chair in his/her absence; and in the event the Chair becomes vacant the Vice-Chair succeeds to this office for the unexpired term pending an election of a Vice-Chair successor for the unexpired term.
- 3.3 The Secretary shall execute all documents in the Board's name and shall perform such other duties as the Board may determine, including recording of meeting minutes and other record keeping. Minutes of meetings and hearings shall be spread in suitable volumes.
- 3.4 Communications, Petitions, Reports, etc., shall be addressed to the Board and be delivered or mailed to the Secretary.

### **Section 4.0 Staff Action on Behalf of the Board**

- 4.1 The Board may require investigation, recommendation and/or such other action by the Zoning Administrator or the Building Inspector as may be advisable or essential for Board consideration and action.

### **Section 5.0 Meetings and Public Hearings**

- 5.1 Called Meetings: Meetings shall be called at the request of the Chair and at such times as the Board may determine.
- 5.2 Special Meetings or Hearings shall be called by the Chair on written request of a majority of the Board and all notices shall be given in accord with the Statute.
- 5.3 Public: All meetings, hearings, records, and accounts shall be open to the public and shall be conducted as "Public Hearings."
- 5.4 Quorum: Four (4) members of the Board shall constitute a quorum. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector, or to decide in favor of any applicant on any matter upon which it is authorized by the Zoning Ordinance to render

a decision. A majority vote of a quorum may deny a requested variance. Whenever a quorum is not present at a meeting, those present shall adjourn the meeting to another day or hold the meeting for the purpose of considering such matters as are on the agenda. If a quorum is not present, a "public hearing" may be held on a matter brought to the Board, however, no action taken at such a meeting shall be final or official unless and until ratified and confirmed at a subsequent meeting at which a quorum is present.

- 5.5 Voting shall be by voice and shall be recorded by yeas and nays.
- 5.6 Abstention from voting: A member shall abstain from voting and participation in the public hearing when there is a conflict of interest involving that Board member in matters being considered and remove himself from the table.
- 5.7 Board Action or any matter on which a hearing is held shall not be taken until the hearing has been concluded.
- 5.8 Motions shall be restated by the Chair before a vote is taken. The names of the maker and supporter shall be recorded. A motion to approve, deny, or approve with conditions shall state the conclusion and the rationale for the conclusion.
- 5.9 Parliamentary Procedure shall be governed by "Roberts Rules of Order" except where state statute directs otherwise.
- 5.10 Audio Recordings of meetings or hearings shall be maintained at City Hall for a period of not less than six (6) months.

### **Section 6.0 Order of Business: Agenda**

- 6.1 Open the meeting at the published time.
- 6.2 Roll Call
- 6.3 Advertised Public Hearings
  - (A) The Chair declares the public hearing open and states it's purpose.
  - (B) The Chair summarizes procedures for all present and procedural handouts may be made available.
  - (C) The Chair informs those present who will be speaking to identify themselves for the record.
  - (D) City Staff (usually the Building or Zoning Official) presents the essence of the application, staff report(s), and other pertinent

data. ' .

- (E) The Appellant in the action shall be heard next.
  - (F) Persons supporting the application are next invited to speak.
  - (G) Persons opposing the application are next invited to speak. Irrelevant and off-the-subject comments should be ruled "out-of-order" by the Chair.
  - (H) The Chair may allow rebuttal, but should require that all comments be directed through the Chair. Board members and staff should refrain from debating or arguing with persons.
  - (I) The Chair next announces the close of the public comment portion; or announces the continuation of the hearing to a future specified date, time and location if the hour is late or further information must be obtained.
  - (J) Deliberation on the matter by the Board is next.
  - (K) If the Board denies an application, the appellant must be informed of appeal rights and procedures.
  - (L) Notices of Decisions shall be in writing and shall be sent to the petitioner(s) .
- 6.4 Persons Requested by the Board to be present to discuss local problems or issues previously considered may next speak.
- 6.5 Persons seeking information or presenting items for the next agenda will be heard.
- 6.6 The Authors of Communications, or their representative(s) may speak next.
- 6.7 Business Session
- A. Approve of Previous Minutes
  - B. Unfinished Business
  - C. Consideration of Matters heard under 6.5
  - D. Other Communications
  - E. Reports
  - F. New Business
  - G. Call to the Public - Time for citizens to be heard
  - H. Adjournment

## **Section 7.0: Amendments**

- 7.1 These rules may be amended at any Board meeting by 2/3 vote of the

Board.

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