

**PEAINE TOWNSHIP**  
**CODIFIED ZONING ORDINANCE**  
**ORDINANCE AMENDMENT NO. 03-2017**

**ADOPTED:** 11-8-17

**EFFECTIVE:** 1-25-18

PEAINE TOWNSHIP ORDAINS:

**TITLE:** To amend the Variance from CD District Requirements Section to comply with amendments to 1994 PA 451 as enacted by 2012 PA 297.

An ordinance to Amend Section 11.9 of the Codified Zoning Ordinance of Peaine Township to read in its entirety as follows:

**SECTION 11.9 VARIANCE FROM CD DISTRICT REQUIREMENTS**

(1) The Board of Appeals may grant a variance from the requirements of the "CD" Critical Dune District if a practical difficulty will occur to the owner of the property if the variance is not granted. In determining whether a practical difficulty will occur if a variance is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. If a practical difficulty will occur to the owner of the property if the variance is not granted, a variance shall be granted under this section unless the Board of Appeals determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:

- (a) The diversity of the critical dune areas within the Township.
  - (b) The quality of the critical dune areas within the Township.
  - (c) The functions of the critical dune areas within the Township.
- (2) The decision of the Board of Appeals shall be in writing and shall be based upon evidence that would meet the standards in section 75 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.275. A decision denying a variance shall document, and any review upholding the decision shall determine, all of the following:
- (a) That the Zoning Board of Appeals has met the burden of proof under subsection (1).
  - (b) That the decision is based upon sufficient facts or data.
  - (c) That the decision is the product of reliable scientific principles and methods.

- (d) That the decision has applied the principles and methods reliably to the facts.
- (e) That the facts or data upon which the decision is based are recorded in the file.
- (3) The Board of Appeals shall not require an environmental site assessment or environmental impact statement for a variance except for a special use project.
- (4) A variance shall not be granted from a setback requirement provided for under Section 6.15 unless the property for which the variance is requested is 1 of the following:
  - (a) A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of this part or a zoning ordinance.
  - (b) A lot legally created after July 5, 1989 that later becomes nonconforming due to natural shoreline erosion.
  - (c) Property on which the base of the first landward critical dune of at least 20 feet in height that is not a Fore dune is located at least 500 feet inland from the first Fore dune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the Fore dune crest or line of vegetation.
- (5) If the Board of Appeals issues a variance for a use other than a special use project in a calendar year, the Board of Appeals shall file a report with the Department of Environmental Quality indicating the variances that have been granted by the Board of Appeals during that period.
- (6) This Ordinance shall take effect on the date that the Department of Environmental Quality approves this Ordinance or 7 days following the publication of this Ordinance as provided by law, whichever occurs last.

YEAS: Welke, Kubic, Kohls, C. Martin, E. Martin

NAYS: None

STATE OF MICHIGAN            )  
   )  
 COUNTY OF CHARLEVOIX        )

We, the undersigned, the duly qualified and acting Supervisor and Clerk of Peaine Township, Charlevoix County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of an Ordinance adopted at a regular meeting of the Township Board on the 8<sup>th</sup> day of November, 2017, and that such Ordinance was duly published in the Petoskey News Review on the 13<sup>th</sup> day of November, 2017.

William Kohls  
 William Kohls, Township Supervisor



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Carla Martin, Township Clerk

PEAINE TOWNSHIP

CODIFIED ZONING ORDINANCE

ORDINANCE AMENDMENT NO. 02-2017

ADOPTED: 11-8-17

EFFECTIVE: 1-25-18

PEAINE TOWNSHIP ORDAINS:

TITLE: To amend the Critical Dune Zoning District Section to comply with amendments to 1994 PA 451 as enacted by 2012 PA 297.

AN ORDINANCE TO AMEND SECTION 6.15 OF THE PEAINE TOWNSHIP CODIFIED ZONING ORDINANCE TO READ IN ITS ENTIRETY AS FOLLOWS:

**SECTION 6.15 "CD", CRITICAL DUNE DISTRICT**

**A. Purpose** - The Township of Peaine hereby declares that the Critical Dune areas are a unique, irreplaceable, and fragile resource that provides significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of the Township, to the state, and to people from other states and countries who visit this resource. The purpose of this Section is to regulate the uses allowed in the District and to balance for present and future generations the benefits of protecting, preserving, restoring, and enhancing the diversity, quality, functions, and values of the Critical Dune Areas with the benefits of economic development and multiple human uses of the Critical Dune Areas and the benefits of public access to and enjoyment of the Critical Dune Areas.

**B. Definitions** - The following terms apply in this Section and Section 11.9 and supplement the terms defined in the Definition Article of this Zoning Ordinance:

(1) "Act" means Part 353 of the Natural Resources and Environmental Protection Act, being the Sand Dunes Protection and Management Act, Act 451 of the Public Acts of 1994, as amended.

(2) "Accessibility measures" means a circulation path and at least 1 entrance on a circulation path complying with American National Standards Institute Chapter 4 standards for accessible routes, from a road or easement serving the property, and, at the option of the applicant, from a sidewalk, a driveway, or a garage. As used in this section, accessibility measures do not include driveways.

- (3) **“Contour change”** includes any grading, filling digging, or excavating that significantly alters the physical characteristic of a Critical Dune Area, except that which is involved in sand dune mining as defined in Part 637.
- (4) **“Crest”** means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 1-foot vertical rise in a 5-1/2 foot horizontal plane for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.
- (5) **“Critical dune area”** or **“Critical Dune Area”** means that geographic area designated in the "Atlas of Critical Dune Areas" dated February 1989 that was prepared by the Department of Natural Resources pursuant to the Act.
- (6) **“Driveway”** as used in this section means a privately owned, constructed, and maintained vehicular access from a road or easement serving the property to the principal building or accessory buildings, that is paved, graveled, or otherwise improved for vehicular access, 16 feet wide or narrower in the sole discretion of the applicant or owner, and may include, in the sole discretion of the applicant or owner, a shared driveway.
- (7) **“Foredune”** means 1 or more low linear dune ridges that are parallel and adjacent to the shoreline of a Great Lake and are rarely greater than 20 feet in height. The lakeward face of a foredune is often gently sloping and may be vegetated with dune grasses and low shrub vegetation or may have an exposed sand face.
- (8) **“Person”** means an individual, partnership, corporation, association, governmental entity, or other legal entity.
- (9) **“Restabilization”** means restoration of the natural contours of a critical dune to the extent practicable, the restoration of the protective vegetative cover of a critical dune through the establishment of indigenous vegetation, and the placement of snow fencing or other temporary sand trapping measures for the purpose of preventing erosion, drifting, and slumping of sand.
- (10) **“Special use project”** means any of the following:
  - (i) A proposed use in a critical dune area for an industrial or commercial purpose regardless of the size of the site.
  - (ii) A multifamily use of more than 3 acres.
  - (iii) A multifamily use of 3 acres or less if the density of use is greater than 4 individual residences per acre.
  - (iv) A proposed use in a critical dune area, regardless of size of the use, that the planning commission, or the department if a local unit of government does not have an approved zoning ordinance, determines would damage or destroy features of archaeological or historical significance.

- (11) “Use” means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristics of a Critical Dune Area or contour change done or caused to be done by a person, but does not include sand dune mining as defined in Part 637 of the NREPA.

**C. Use Regulations** - Land or buildings in this Zoning District may be used for the following purposes only and not more than three (3) buildings may be erected in total on a single piece of property. No use shall be permitted that does not comply with the minimum setback requirements that are set forth in this Section.

No use shall be allowed unless a zoning permit is obtained from the Township. Prior to the creation and recording of any new lot, the property owner is encouraged to seek a zoning permit to ensure that the lot will be useable for a purpose permitted under this Ordinance. If a subdivision, site condo, or any similar type of land division is proposed in this District, the Planning Commission shall review the proposed development to assure compliance with this Section for each proposed lot.

- (1) Not more than one (1) single family dwelling on each lot.
- (2) Not more than one guesthouse provided the following conditions exist:
  - (a) The guest house shall be located a minimum of fifteen (15) feet landward of the principal dwelling as determined by the Planning Commission after consideration of the best location to protect the dune.
  - (b) The floor area of the guesthouse shall not be larger than 50% of the principal dwelling or 1,500 square feet whichever is less, and shall be architecturally compatible with the principle dwelling. A guesthouse shall be no smaller than 400 square feet.
  - (c) In no event shall a guesthouse be permitted on a lot of less than two hundred (200) feet in width as measured at the building line.
- (3) Not more than two (2) detached accessory buildings, which are not more than twelve (12) feet in height, subject to the following conditions:
  - (a) Said accessory building shall not be located closer to a side lot line than allowed for a principal building.
  - (b) Detached accessory buildings, any portion of which is located on the side of a principal building, shall not be less than six (6) feet from such principal building and not nearer to the side lot line than the width of the side yard required on the lot for the principal building and shall maintain a front yard setback equal to or greater than that of the principal building.

- (4) Other accessory uses customarily incidental to the preceding listed permitted uses including, but not limited to, off-street parking as required by Article VIII and signs as regulated by Article VII of this Ordinance.
- (5) A driveway for any dwelling or other permanent building allowed under this Section or a lawful nonconforming use, subject to the following requirements:
  - (a) A driveway shall be permitted either to the principal building or, in the sole discretion of the applicant, to an accessory building, under the provisions of this Section. Additional driveways, if any, shall meet the applicable requirements for any other use under this part. The development of a plan for a driveway should include consideration of the use of retaining walls, bridges, or similar measures, if feasible, to minimize the impact of the driveway, parking, and turnaround areas, and the consideration of alternative locations on the same lot of record.
  - (b) Driveways on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include (i) storm water drainage that provides for disposal of storm water without serious erosion, (ii) methods for controlling erosion from wind and water, and (iii) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.
  - (c) Driveways on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include (i) storm water drainage that provides for disposal of storm water without serious erosion, (ii) methods for controlling erosion from wind and water, and (iii) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the driveway is not likely to increase erosion or decrease stability.
- (6) Temporary construction access for all construction, including new construction, renovation, repairs, rebuilding, or replacement, and repair, improvement, or replacement of septic tanks and systems, shall be allowed for any use allowed in a Critical Dune Area for which a driveway is not already installed by the owner, subject only to the requirements that the temporary access shall not involve a contour change or vegetation removal that increases erosion or decreases stability except as can be restabilized upon completion of construction. The temporary access shall be maintained in stable condition, and restabilization shall be commenced promptly upon completion of the construction.

- (7) Notwithstanding any other provision of this Section, at the request of the applicant, the construction, improvement, and maintenance of accessibility measures shall be permitted for any dwelling or other permanent building allowed in a Critical Dune Area, including a dwelling or other permanent building approved under this part or a lawful nonconforming use, subject only to applicable permit requirements of this Section and the following:
- (a) Accessibility measures on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot vertical rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include (i) storm water drainage that provides for disposal of storm water without serious erosion, (ii) methods for controlling erosion from wind and water, and (iii) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.
  - (b) Accessibility measures on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include (i) storm water drainage that provides for disposal of storm water without serious erosion, (ii) methods for controlling erosion from wind and water, and (iii) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the accessibility measures are not likely to increase erosion or decrease stability.
- (8) A special use project as defined in Section 35301 of the Act and as allowed under this Section.

**D. Height Regulations** - No building shall exceed thirty-five (35) feet in height.

**E. Area Regulations** - No building or structure shall hereafter be erected, altered or enlarged unless the following yard and lot area requirements are provided and maintained in connection with such building, erection, alteration, or enlargement.

- (1) **Front Yard** - There shall be a front yard setback of not less than thirty-five (35) feet.
- (2) **Side Yard** - There shall be a side yard setback of not less than twenty-five (25) feet on each side of any dwelling or accessory building. The Planning Commission may reduce this requirement to a minimum of ten (10) feet for the purpose of reducing dune impact. On the street side of a corner lot, a twenty-five (25) foot setback shall be provided and maintained.



- (3) **Rear Yard** - There shall be a rear yard setback of not less than thirty-five (35) feet. (See Section 4.22).
- (4) **Lot Area and Width** - The minimum lot area for uses in this zoning district shall be one hundred thousand (100,000) square feet and have a minimum width of two hundred (200) feet as measured at the building line. The Planning Commission, however, shall authorize lots with a minimum width of less than two hundred (200) feet if it finds that all of the following standards are met:
  - (a) The lot was a lot of record as of July 5, 1989.
  - (b) The lot is no less than one hundred fifty (150) feet in width as measured at the building line or is no less than half of the original lot width, whichever is greater.
  - (c) The lot is served by one (1) access drive which serves two (2) or more lots up to where it must split to serve individual lots, unless it is demonstrated that the one (1) access drive will have a more deleterious effect on the dune environment than multiple access drives, in which case multiple access drives may be permitted (but only the minimum number necessary to reasonably access the dwellings).
  - (d) The lot has the legal right to use one (1) access path to the beach which serves two (2) or more lots, unless it is demonstrated that one (1) access path will have a more deleterious effect on the dune environment than multiple access paths, in which case multiple access paths may be permitted (but only the minimum number necessary to reasonably provide access to the beach).
- (5) **Shared Access** - Shared access to the lot or the lake between adjacent lots is allowed as follows.
  - (a) At the discretion of the applicant or owner, one access driveway may serve two (2) or more lots.
  - (b) One non-vehicular access path or boardwalk to the beach for two (2) or more lots provided it is demonstrated that one (1) beach access path will have a less deleterious effect on the dune environment than multiple paths.

F. **Floor Area Requirements** - Each dwelling unit in this Zoning District shall have a minimum of seven hundred sixty-eight (768) square feet of usable floor area exclusive of porches, garages, unfinished basements, and utility areas and a two story dwelling shall have a minimum of six hundred (600) square feet on the first floor.

**G. Parking Requirements** – There shall be no minimum parking area requirements. Parking shall be provided for on the parcel so as to minimize the impact on the Critical Dune Area.

**H. Application Requirements**

(1) Preliminary sketches of proposed site and development plans shall be submitted for review to the Planning Commission prior to an application. The purpose of such procedure is to allow discussion between the proposed applicant and the Planning Commission to better inform the proposed applicant of the acceptability of their proposed plans prior to incurring extensive engineering and other costs, which might be necessary for final site plan approval. Such plans shall include information required by Article XIV as deemed necessary by the Zoning Administrator. The Planning Commission shall review the preliminary development plan and make recommendations to the proposed applicant based on the purposes, objectives and requirements of this Ordinance, and specifically paragraph 3 of this subsection. Any application shall not be received by the Township unless this procedure is followed or waived by the Planning Commission.

(2) A Development Plan in conformity with this Section and Article XIV of this Ordinance and the fee established by the Township shall be submitted with an application for each permitted and accessory use prior to any site work or grading conducted on the property. No structure shall be constructed, reconstructed, altered, or relocated in this District prior to the Planning Commission approving the Final Development Plan. A zoning permit shall not be issued until permits have been granted from all local and state agencies and a Final Development Plan has been approved by the Planning Commission. The plan shall illustrate porches, decks, and other structures to be built on the site.

If the plan submitted illustrates less than three (3) buildings as permitted by this Section, the Planning Commission shall inquire about potential future building on the site. The purpose of this request is to promote the maximum protection of the dune in relation to all proposed or future buildings.

(3) The applicant shall submit, the following in written or graphic form:

(a) A finding that the project is in compliance with Part 91 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, including a written review by the Charlevoix County Soil Erosion and Sedimentation Control Officer.

(b) Assurances that the cutting and removing of trees and other vegetation will be performed according to the "Forestry Management Guidelines for Michigan" prepared by the Society of American Foresters in 1987 as revised in 2010 and may include a

program to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation than were removed by the proposed use.

- (c) A topographic map of the site with 5-foot contour intervals at or near any proposed structure or roadway or consult with the local Soil Conservation District regarding the percent of slope.
- (d) A written statement that the proposed structure will occupy land having a slope of less than thirty-three and a third (33 1/3%) percent. (See slope definition in Article III).
- (e) If the proposed structure is on a slope that is twenty-five (25) to thirty-three and a third (33 1/3%) percent, the Development Plan shall be prepared by a registered professional architect or professional engineer and the site plan shall provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water. Prior to the approval of the Plan, the Planning Commission shall submit the Development Plan to the Charlevoix Conservation District for review and comment.
- (f) Any proposed sewage treatment or disposal system on the site shall be approved by the Health Department of Northwest Michigan.
- (g) The property owner has caused the staking of the location of all proposed structures and uses and property corners for the Planning Commission site inspection a minimum of seven (7) days prior to the Planning Commission meeting scheduled to review the application.
- (h) As part of an application for a Special Use Project, the Planning Commission may require an environmental site assessment or environmental impact statement. If an environmental site assessment or environmental impact statement is required, it shall include the following information:
  - (1) The name and address of the applicant.
  - (2) A description of the applicant's proprietary interest in the site.
  - (3) The name, address, and professional qualifications of the person preparing the environmental assessment and his or her opinion as to whether the proposed development of the site is consistent with protecting features of environmental sensitivity and archaeological or historical significance that may be located on the site.

- (4) The description and purpose of the proposed use.
- (5) The location of existing utilities and drainage ways.
- (6) The general location and approximate dimensions of proposed structures.
- (7) Major proposed change of land forms such as new lakes, terracing, or excavating.
- (8) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.
- (9) Approximate location and type of proposed drainage, water, and sewage facilities.
- (10) Legal description of property.
- (11) A physical description of the site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
- (12) A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.
- (13) An erosion review showing how erosion control will be achieved and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.
- (14) If an environmental impact statement is required, the statement shall include all necessary documentation to establish that the following standards for the construction and post-construction periods shall be met:
  - (i) Surface drainage designs and structures are erosion-proof through control of the direction, volume, and velocities of drainage patterns. These patterns shall promote natural vegetation growth that is included in the design so that drainage waters may be impeded in their flow and percolation encouraged.
  - (ii) The design shall include trash collection devices when handling street and parking drainage to contain solid waste and trash.
  - (iii) Watercourse designs, control volumes, and velocities of water to prevent bottom and bank erosion. In particular,

changes of direction shall guard against undercutting of banks.

- (iv) If vegetation has been removed or has not been able to establish on surface areas such as infill zones, it is the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, windbreaks, and other similar barriers.

(15) An environmental impact statement shall also include:

- (i) Six copies and one reproducible transparency of a schematic use plan of the proposed use showing the general location of the proposed use and major existing physical and natural features on the site, including, but not limited to, watercourses, rock outcropping, wetlands, and wooded areas.
- (ii) A soil review giving a short descriptive summary of the soil types found on the site and whether the soil permits the use of septic tanks or requires central sewer. The review may be based on the "Unified Soil Classification System" as adopted by the United State Government Corps of Engineers and Bureau of Reclamation, dated January 1952, or the National Cooperative Soil Survey Classification System, and the standards for the development prospects that have been offered for each portion of the site.
- (iii) A substrata review including a descriptive summary of the various geologic bedrock formation underlying the site, including the identification of known aquifers, the approximate depths of the aquifers, and, if being tapped for use, the principal use to be made of these waters, including irrigation, domestic water supply, and industrial usage.
- (iv) The location and notation of public streets, parks, and railroad and utility rights-of-way within or adjacent to the proposed use.
- (v) The general location and dimensions of proposes streets, driveways, sidewalks, pedestrian ways, trails, off-street parking, and loading areas.
- (vi) Approximate existing and proposed contours and drainage patterns, showing at least 5-foot contour intervals.

(vii) An aerial photo and contour map showing the development site in relation to the surrounding area.

(16) Any other information that the Planning Commission may require.

**I. Application Process:**

- (1) The Planning Commission shall provide notice of an application to each person who makes a written request to the Township for notification of applications as provided by the Act.
- (2) The Planning Commission may hold a public hearing on the application. However, upon the written request of two or more persons who own real property within two miles of the proposed use, the Planning Commission shall hold a public hearing on the permit application.
- (3) At least 10 days' notice of any public hearing to be held on the application shall be given by publication in the Petoskey News Review and to the persons who have requested notice of applications.
- (4) The decision to grant or deny a permit under this Section shall be made within 60 days after the Township receives an application or amended application following a denial if no public hearing is held, or within 90 days if a public hearing is held.
- (5) All decisions to grant or deny an application for a permit under this Section shall be in writing and shall include reasons for the decision and, if denied, shall include the following:
  - (a) Any modifications that could be made to the application that may result in granting the permit.
  - (b) That the decision is based upon sufficient facts or data.
  - (c) That the decision is the product of reliable scientific principles and methods.
  - (d) That the decision has applied the principles and methods reliably to the facts.
  - (e) That the facts or data upon which the decision is based are recorded in the file.
  - (f) That the use will significantly damage the public interest in the land, or, if the land is publicly owned, the public interest will be significantly damaged by significant and unreasonable depletion or degradation of the diversity, quality, or function of the Critical Dune Areas within the Township.

- (6) The Planning Commission may recommend alternatives to a proposed development to minimize adverse impacts anticipated if the development is approved and to assure compliance with all applicable state and local requirements.
- (7) The Planning Commission shall determine whether the requirements of the Zoning Ordinance have been met and whether the Development Plan and Application are consistent with existing laws.
- (8) Prior to issuing a permit allowing a special use project within a Critical Dune Area, the Planning Commission shall submit the special use project application and plan and the proposed decision of the Planning Commission to the Department of Environmental Quality for review.

**J. Review Standards of the Development Plan and Application.** Each application for a permit under this Section shall be reviewed for the purpose of determining that the proposed use meets all of the following and no permit shall be issued for any use in the District unless all of the following standards and other standards set forth in this Section are met:

- (1) Development for any use shall result in the least topographic modification of the site as is possible.
- (2) Filling and grading shall be permitted only according to an approved site plan and approved Soil Erosion and Sedimentation Control Permit. Sand and bluff stabilization shall be required during all phases of construction and post-construction as specified by standards set forth in Part 91 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended. Such a revegetation program shall be designed to return open sand areas, both pre-existing and newly created, to a stable condition, to be initiated as soon as possible following construction and include the measures to be taken for the maintenance of revegetated areas for at least two years after the time of planting. No fill shall be placed in an established floodplain or wetland. No fill shall cause surface water to collect or to run off onto adjoining lands contrary to existing natural drainage.
- (3) No soil, sand, gravel, or other material shall be permitted to be removed from lands within this District except as may be authorized by a permit granted pursuant to the Act or as may be incidental to the establishment of a permitted use approved by a development plan under the terms of this Section and Article XIV of this Ordinance. Incidental soil, sand or gravel removal shall conform with the following standards: Removal for the purpose of constructing a basement shall be permitted, but soil removed shall be retained on the site when doing so does not enlarge the risk of erosion or create another threat to the development or the natural environment.

- (4) Whenever feasible and within the discretion of the landowner, shared access drives and utility easements shall be provided.
- (5) No vehicles shall have access lakeward of the Foredune except where public access has been provided, is approved, and is lawful. No off-road vehicle use is permitted from the shoreline to the inland boundary of a Critical Dune Area, except in department designated areas and on the access drive providing access to an approved structure.
- (6) If a non-vehicular pathway or trail that is not an accessibility measure as defined in this Section to the shore would cause erosion or damage to nonvegetated or vegetated sand areas, raised boardwalks or stairs may be required. Such a structure shall not be designed so as to cause any weakening or damage to the bluff or dune.
- (7) Stairways or lifts shall be designed so as to avoid placement on dune faces unless there is no other feasible alternative. Approval may be conditioned on a design, color, and materials that blends the structure into the dune environment and the planting of obscuring vegetation where appropriate.
- (8) No sewage shall be disposed on-site unless the standards of applicable sanitary codes are met or exceeded.
- (9) The proposed use that is a structure will be constructed behind the crest of the first landward ridge of a Critical Dune Area that is not a Foredune. However, if construction is to occur within one hundred (100) feet measured landward from the crest of the first landward ridge that is not a Foredune, the applicant shall demonstrate that the proposed use meets all of the following requirements:
  - (a) The use will not destabilize the Critical Dune Area. The applicant may want to consider utilizing excavation techniques and methods to insure no unnecessary destabilization of the landward and/or lakeward side of the dune including the possibility that mechanical equipment not be used.
  - (b) Access to the structure is from the landward side of the dune.
  - (c) The dune is restabilized with indigenous vegetation. The applicant may wish to consider limiting contour changes and vegetative removal to that which are necessary for siting the structure in order to meet this requirement in order to avoid extensive restabilization measure following construction.
  - (d) The crest of the dune is not reduced in elevation.
  - (e) The structure and access to the structure shall be in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan shall provide for the



disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.

**K. Additional Prohibited Uses.** Unless otherwise set forth herein or a variance is granted pursuant to Section 11.9 of the Zoning Ordinance the following uses are prohibited:

- (1) Construction of a dwelling or other permanent building on the first lakeward facing slope of a Critical Dune Area or Foredune except on a lot of record that was recorded prior to July 5, 1989 that does not have sufficient buildable area landward of the crest to construct the dwelling or other permanent building as proposed by the applicant. For any permit issued under this subsection, the proposed construction, to the greatest extent possible, shall be placed landward of the crest. The portion of the development that is lakeward of the crest shall be placed in the location that has the least impact on the Critical Dune Area.
- (1) A structure and access to the structure on a slope within a Critical Dune Area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan provides for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.
- (2) A use on a slope within a Critical Dune Area that has a slope steeper than a 1-foot vertical rise in a 3-foot horizontal plane.
- (3) A use involving a contour change if the local unit of government or the department determines that it is more likely than not to increase erosion or decrease stability.
- (4) Silvicultural practices, as described in the "Forest Management Guidelines for Michigan," prepared by the Society of American Foresters as revised in 2010, if the local unit of government or the department determines that they are more likely than not to increase erosion or decrease stability.
- (5) A use that involves a vegetation removal if the local unit of government or the department determines that it is more likely than not to increase erosion or decrease stability.

**L. Existing Uses.** A structure or use located in a Critical Dune Area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, is exempt from the operation of this Section for the purpose of rebuilding or replacing the structure or use, if the structure or use was lawful at the time it was constructed or commenced. A replacement structure and its use may differ from that which was destroyed if it does not exceed in size or scope that which was destroyed.

**M. Exemptions.**

A use needed to maintain, repair, or replace existing utility lines, pipelines, or other utility facilities within a Critical Dune Area that were in existence on July 5, 1989, or were constructed in accordance with a permit under this part, is exempt for purposes for which the permit was issued from the operation of this part or a local ordinance approved under this part if the maintenance, repair, or replacement is completed in compliance with all of the following:

- (a) Vehicles shall not be driven on slopes greater than 1-foot vertical rise in a 3-foot horizontal plane.
- (b) All disturbed areas shall be immediately stabilized and revegetated with native vegetation following completion of work to prevent erosion.
- (c) Any removal of woody vegetation shall be done in a manner to assure that any adverse effect on the dune will be minimized and will not significantly alter the physical characteristics or stability of the dune.
- (d) To accomplish replacement of a utility pole, the new pole shall be placed adjacent to the existing pole, and the existing pole shall be removed by cutting at ground level.
- (e) In the case of repair of underground utility wires, the repair shall be limited to the minimal excavation necessary to replace the wires by plowing, small trench excavation, or directional boring. Replacement of wires on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane shall be limited to installation by plowing or directional boring only.
- (f) In the case of repair or replacement of underground pipelines, directional boring shall be utilized, and if excavation is necessary to access and bore the pipeline, the excavation area shall be located on slopes 1-foot vertical rise in a 4-foot horizontal plane or less.

**N. Additional Lands Regulated as Critical Dunes.**

Lands that are within two hundred and fifty (250) feet of a Critical Dune Area, that are determined by the Township Board after a public hearing and upon recommendation of the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a Critical Dune Area and any other such area determined by the Township to be essential to the hydrology, ecology, topography, or integrity of a Critical Dune Area after a public hearing and upon recommendation of the Planning Commission.

**O. Federal and State Owned Land.**

Federally owned land, to the extent allowable by law, and state owned land within Critical Dune Areas shall be managed by the federal or state government in a manner that is consistent with this Section.

**P. Bond.**

The Planning Commission may require the applicant to submit a bond executed by an approved surety in an amount necessary to assure faithful performance of a zoning permit issued under this Section as a condition to obtaining a zoning permit.

**Q. Penalty.**

- (a) Restoration. The Township may order a person to restore a Critical Dune Area that has been degraded by that person. The Township shall establish by policy a procedure by which the restoration of the Critical Dune Area is monitored to assure that the restoration is completed in a satisfactory manner.
- (b) In addition to any other penalty or remedy available under the Ordinance or as provided by law, the Township may request that the County Prosecutor institute an action for a restraining order, injunction, or other proper remedy to prevent a violation of this Section.
- (c) In addition to any other relief provided by this Ordinance or law, the court may impose on a person who violates this part, or a permit, a civil fine of not more than \$5,000.00 for each day of violation, or may order a violator to pay the full cost of restabilization of a Critical Dune Area or other natural resource that is damaged or destroyed as a result of a violation, or both.
- (d) A person who violates this part, or a person who violates a permit issued under this part, is guilty of a misdemeanor, punishable by a fine of not more than \$5,000.00 per day for each day of violation.

**R. Fair Market Valuation.**

If a permit for a proposed allowed use within a Critical Dune Area is denied, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the restriction.

**S. Effective Date.**

This Ordinance shall take effect on the date that the Department of Environmental Quality approves this Ordinance or 7 days following the publication of this Ordinance as provided by law, whichever occurs last.

**T. Severability.**

The provisions of this Section are severable. If any provision of this Section or its application to any person, use, or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Section that can be given effect without the invalid provisions or application provided that the Township notifies the Department and the Department determines that the remaining Section is in compliance with Part 353 of the Michigan Natural Resources and Environmental Protection Act .

YEAS: Welke, Hubic, Kohls, C. Martin, E. Martin

NAYS: None

STATE OF MICHIGAN )

COUNTY OF CHARLEVOIX )

We, the undersigned, the duly qualified and acting Supervisor and Clerk of Peaine Township, Charlevoix County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of an Ordinance adopted at a regular meeting of the Township Board on the 8<sup>th</sup> day of November, 2017, and that such Ordinance was duly published in the Petoskey News Review on the 13<sup>th</sup> day of November, 2017

William Kohls  
William Kohls, Township Supervisor

Carla Martin  
Carla Martin, Township Clerk

PEAINE TOWNSHIP CODIFIED ZONING ORDINANCE

ADOPTING ORDINANCE  
ORDINANCE NO. 01-2017

Effective Date: 11-20-17

AN ORDINANCE ADOPTING AND ENACTING THE CODIFIED ZONING ORDINANCE FOR PEAINE TOWNSHIP, MICHIGAN; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

PEAINE TOWNSHIP ORDAINS:

**Section 1.** Short title.

This ordinance shall be known as the "Codified Zoning Ordinance adopting ordinance" and may be so cited.

**Section 2.** Adoption of Code of Ordinances.

The Code entitled "Peaine Township Codified Zoning Ordinance," consisting of Articles I through XVII, is adopted.

**Section 3.** Repealer.

All ordinances of a general and permanent nature enacted on or before 11-8, 2017, and not included in the Code or recognized and continued in force by reference therein, are repealed. This repeal shall not be construed to affect a right or liability accrued or incurred under any

**Section 4.** Prior ordinances not revived.

The adoption of the Codified Zoning Ordinance shall not be construed to revive any ordinance or part thereof that has been repealed or replaced by a subsequent ordinance.

**Section 5.** Code additions or amendments.

This Code shall be amended by ordinance adopted as required by law. The effective date of such ordinance shall be the effective date set forth in the ordinance. The title of each amendatory ordinance, adapted to the particular circumstances and purposes of the amendment, shall be substantially as follows:

To amend any section:

AN ORDINANCE TO AMEND SECTION \_\_\_\_\_ OF THE PEAINE TOWNSHIP CODIFIED ZONING ORDINANCE.

To insert a new section, chapter, article, division or subdivision:

AN ORDINANCE TO AMEND THE PEAINE TOWNSHIP CODIFIED ZONING ORDINANCE BY ADDING A NEW SECTION \_\_\_\_\_ (NEW SECTIONS, OR A NEW CHAPTER, ARTICLE, DIVISION OR SUBDIVISION, as the case may be) WHICH NEW SECTION (SECTIONS, CHAPTER, ARTICLE, DIVISION OR SUBDIVISION) SHALL BE DESIGNATED AS ARTICLE \_\_\_\_\_ SECTION \_\_\_\_\_ (SECTIONS \_\_\_\_\_ AND \_\_\_\_\_ or proper designation if a chapter, article, division or subdivision is added) OF CHAPTER \_\_\_\_\_ OF SAID CODE.

To repeal a section, chapter, article, division or subdivision:

AN ORDINANCE TO REPEAL SECTION \_\_\_\_\_ (SECTIONS \_\_\_\_\_ AND \_\_\_\_\_) (as the case may be), ARTICLE \_\_\_\_\_, OF THE PEAINE TOWNSHIP CODIFIED ZONING ORDINANCE.

Subsequent amendments to the Zoning Ordinance as set forth above shall be included in the Code upon adoption of an annual Ordinance Approving the Editing and Inclusion of Certain Ordinances as Part of the Peaine Township Codified Zoning Ordinance.

Reference to the Code shall include the additions, amendments and repealers properly enacted as set forth above.

**Section 6.** Later ordinances.

Ordinances adopted after the effective date of this Ordinance that amend or refer to ordinances or provisions that have been codified in the Code adopted herein shall be construed as if they amend or refer to like provisions of the Code. References to specific section numbers of any prior code in ordinances adopted prior to this ordinance's effective date, where the section number has changed as a result of recodification shall be construed as if the reference is to the new section number in the this Code.

**Section 7.** Savings clause.

The alteration of any ordinance, or change of section number of any ordinance by this ordinance does not relinquish any penalty, forfeiture, or liability, whether criminal or civil in nature, and such ordinance shall be treated as still remaining in force as necessary for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of the penalty, forfeiture, or liability.

**Section 8.** Severability.

If any word, phrase, portion or section of the code or application of any portion or section of the code to a specific person, property, or situation is found to be invalid by a court or tribunal, that invalidity shall not affect the remaining portions or applications of the code which can be given effect without the invalid portion or application as long as the remaining portions are not determined to be inoperable and, to this end, this code and its provisions are declared to be severable.

**Section 9. Effective Date.**

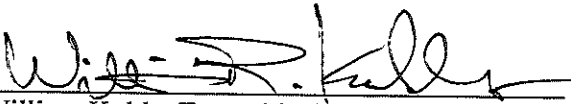
This ordinance shall become effective seven (7) days following the date of publication of this Ordinance in the manner provided by law.

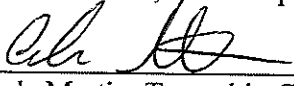
YEAS: Welke, Kubic, Kohls, C. Martin, E. Martin

NAYS: None

STATE OF MICHIGAN            )  
  )  
COUNTY OF CHARLEVOIX      )

We, the undersigned, the duly qualified and acting Supervisor and Clerk of Peaine Township, Charlevoix County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of an Ordinance adopted at a regular meeting of the Township Board on the 8<sup>th</sup> day of November, 2017, and that such Ordinance was duly published in the Petoskey News Review on the 13<sup>th</sup> day of November, 2017.

  
\_\_\_\_\_  
William Kohls, Township Supervisor

  
\_\_\_\_\_  
Carla Martin, Township Clerk