

EXCERPT OF MINUTES

At a regular meeting of the Park Township Zoning Board of Appeals held at the Township Hall located at 52 - 152nd Avenue, Park Township, Ottawa County, Michigan, on the 5th day of May, 2025, at 6:30 p.m., local time.

PRESENT: Serne, Payne-Naik, Fleece, Morgan, Eade

ABSENT: None

After certain other matters of business were concluded, the Chairman stated the next order of business was the consideration of a proposed resolution and appended report concerning an application filed by Attorney Kyle Konwinski on December 20, 2024, seeking an interpretation of the Park Township Zoning Ordinance, including Section 38-631 and other related sections regarding short-term rentals, on behalf of multiple property owners (approximately 104 properties). After discussion, the following resolution was offered by Fleece and supported by Eade:

RESOLUTION

WHEREAS, Friday, December 20, 2024, Attorney Kyle Konwinski, filed two nearly identical applications, the first on behalf of his clients who are various owners of approximately 103 different parcels of property within the Township, and the second was on behalf of a single property owner, with each application seeking an interpretation of the Park Township Zoning Ordinance, including Section 38-631 and other related sections regarding the nonconforming status of short-term rentals within the Township, and per the words of the Application, "more specifically, the application seeks interpretations from the Zoning Board of Appeals ("ZBA") on four sub-issues (some of which require interpretations for various components):

- 1) Did the 1974 Zoning Ordinance permit the use of short-term rentals (STRs) in residential zoning districts (in other words, did STRs fall under the definition of a “single family dwelling”)?
- 2) Notwithstanding how the ZBA currently interprets the 1974 Zoning Ordinance, is the Township estopped from enforcing its amended ordinance, Zoning Ordinance 2024-01, such that the use of single-family dwellings as STRs can continue as a nonconforming use despite Amendments 2023-02 and 2024-01?
- 3) Notwithstanding how the ZBA currently interprets the 1974 Zoning Ordinance, was the 1974 Zoning Ordinance unconstitutionally vague (i.e., as explained further below, a lay person was not on fair notice of the conduct prohibited), such that the use of STRs was lawful prior to Amendments 2023-02 and 2024-01 and therefore can continue as a nonconforming use?
- 4) Did the Township’s Zoning Ordinance in effect from 1963 until 1974 permit the use of STRs in residential zoning districts?”

WHEREAS, at its regular meeting held on January 6, 2025, the ZBA passed a motion to require a \$5,000 escrow fee for each of the two applications based on the size of each application and the ZBA’s consideration of the likelihood that the Township would incur significant additional expenses in processing the applications, due to possible legal fees in reviewing the applications and materials to advise the ZBA on relevant legal issues, and likely rental fees associated with having to hold a public hearing in a larger private venue in order to accommodate the anticipated audience of more than 100 attendees, which exceeds the capacity of the meeting room at the Township Hall;

WHEREAS, Attorney Konwinski and his client, Stefan Walker, withdrew the second application based on the understanding that the Township would allow the Attorney Konwinski to amend the first application to include Stefan Walter as part of the larger group, and thereafter paid a single escrow fee and proceeded with the remaining application;

WHEREAS, as the Township processed and reviewed the 104 property affidavits signed by the various property owners, the Township noted that two affidavits appeared to contain false or misleading information, which could result in voiding the application, but rather the Township notified Attorney Konwinski on January 31, 2025, of the two affidavits that appeared to contain

inaccurate or false information to give the Attorney Konwinski the opportunity to correct those two affidavits, rather than have the Township proceed to immediately void the Application, wasting time and expense of all involved;

WHEREAS, on February 6, 2025, Attorney Konwinski submitted two corrected affidavits;

WHEREAS, once Attorney Konwinski filed the amended application, with the inclusion of Stefan Walter and the corrected affidavits, the Township staff provided the Zoning Board of Appeals with a copy of the amended application at the Zoning Board of Appeals' next regularly scheduled meeting held on February 10, 2025;

WHEREAS, at the Zoning Board of Appeals' next regularly scheduled meeting, held on March 3, 2025, the Zoning Board of Appeals passed a motion to schedule the public hearing on the application at the Zoning Board of Appeals' next meeting scheduled for March 31, 2025, to be held at a larger venue and to begin at 5:30 pm to accommodate the expected larger crowd;

WHEREAS, the Zoning Board of Appeals conducted a public hearing with respect to the application at its meeting held on March 31, 2025, after providing proper notice as provided by the Michigan Zoning Enabling Act, Michigan Open Meetings Act, and the Township Zoning Ordinance;

WHEREAS, after the conclusion of the public hearing on March 31, 2025, which public hearing lasted approximately four and a half hours, a motion was made by member Morgan and supported by member Eade, to postpone discussion on the application until a special meeting to be scheduled and held on April 21, 2025, which motion passed unanimously;

WHEREAS, at the special meeting held on April 21, 2025, during discussion and deliberation on the Application, the Zoning Board of Appeals reached consensus on the Application – in particular with regard how to decide issues one and four, and that the Zoning Board of Appeals did not have proper jurisdiction to answer issues two and three as those issues were not interpretations of the Zoning Ordinance but questions that would require a judicial interpretation,

and following that consensus a motion was made by member Morgan and supported by member Eade, to table action on the Application and direct staff and Township legal counsel to prepare a resolution and report consistent with the consensus reached by the Zoning Board of Appeals, which resolution and report would be subject to the review, modification, rejection or approval of the Zoning Board of Appeals at its next regularly scheduled meeting, which motion passed unanimously;

WHEREAS, at the special meeting held on April 21, 2025, after member Morgan noted that the Exhibits to the Application included excerpts from various depositions in the civil litigation that Attorney Konwinski previously filed against the Township, and that the Township staff provided members of the Zoning Board of Appeals with the opportunity to review copies of the full transcripts of the depositions for context and consideration, a motion was made by member Morgan and supported by Chairperson Fleece, to supplement the official record for the Application by including the complete depositions of Kirk Briggs, Ed deVries, and Emma Posillico;

WHEREAS, the Park Township Attorney has provided the Zoning Board of Appeals with a this resolution and a Report that addresses the interpretation of the various provisions of the Zoning Ordinance as requested by the Zoning Board of Appeals, the Zoning Board of Appeals has reviewed this resolution and the Report, and now desires to take action on the Application seeking an interpretation of the Zoning Ordinance as it relates to the nonconforming status of short-term rentals in the Township.

THE PARK TOWNSHIP ZONING BOARD OF APPEALS RESOLVES THAT:

1. The Zoning Board of Appeals has adopted the Report attached as Exhibit A as its official decision regarding the Application seeking an interpretation of Section 38-631 and the related sections of the Park Township Zoning Ordinance related to the legal status of short-term

rentals within the Township in general and as applied to the 104 properties included within the Application.

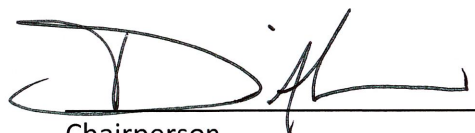
2. All resolutions in conflict herewith in whole or in part are hereby revoked to the extent of such conflict.

YES: Eade, Morgan, Serne, Payne-Naik, Fleece

NO: None

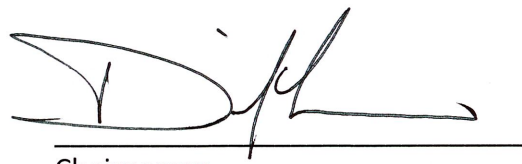
RESOLUTION DECLARED ADOPTED.

Dated: May 5, 2025.


Chairperson

CERTIFICATE

As the Chairperson of the Zoning Board of Appeals of the Township of Park, Ottawa County, Michigan, I certify that the foregoing is a true and complete copy of a resolution adopted by the Zoning Board of Appeals at a regular meeting held on May 5, 2025. I further certify that public notice of the meeting was given pursuant to and in full compliance with Michigan Act 267 of 1976, as amended, and that the minutes of the meeting were kept and will be or have been made available as required by said Act.

A handwritten signature in black ink, appearing to be 'D. J. ...', written over a horizontal line.

Chairperson

EXHIBIT A
REPORT OF THE PARK TOWNSHIP ZONING BOARD OF APPEALS
REGARDING INTERPRETATION OF THE
PARK TOWNSHIP ZONING ORDINANCE
PERTAINING TO
NONCONFORMING STATUS OF SHORT-TERM RENTALS IN THE TOWNSHIP

Summary of Application and of Decision

Attorney Kyle Konwinski filed an application with the Zoning Board of Appeals seeking an interpretation of Section 38-631 of the Zoning Ordinance (which pertains to the continuation of nonconforming uses), and other related sections of the Zoning Ordinance, to determine the lawfulness (or lawful nonconforming status) of short-term rentals in residential zoning districts prior to Zoning Ordinance Amendment 2023-02 and Zoning Ordinance Amendment 2024-01. Specifically, Attorney Konwinski asked the ZBA to answer the following four questions.

- 1) Did the 1974 Zoning Ordinance permit the use of short-term rentals (STRs) in residential zoning districts (in other words, did STRs fall under the definition of a “single family dwelling”)?
- 2) Notwithstanding how the ZBA currently interprets the 1974 Zoning Ordinance, is the Township estopped from enforcing its amended ordinance, Zoning Ordinance 2024-01, such that the use of single-family dwellings as STRs can continue as a nonconforming use despite Amendments 2023-02 and 2024-01?
- 3) Notwithstanding how the ZBA currently interprets the 1974 Zoning Ordinance, was the 1974 Zoning Ordinance unconstitutionally vague (i.e., as explained further below, a lay person was not on fair notice of the conduct prohibited), such that the use of STRs was lawful prior to Amendments 2023-02 and 2024-01 and therefore can continue as a nonconforming use?
- 4) Did the Township’s Zoning Ordinance in effect from 1963 until 1974 permit the use of STRs in residential zoning districts?

Notwithstanding the order of the questions as posed by Attorney Konwinski, the Zoning Board of Appeals will make its findings and decisions in a manner and order that the Zoning Board of Appeals believes is more logically appropriate. For the reasons explained in this Report, the Zoning Board of Appeals finds that the Township Zoning Ordinance did not previously define the term “short-term rental” prior to Ordinance 2024-01. The Zoning Board of Appeals finds that the use of a property for a short-term rental is a use that provides lodging accommodations on a transient or short-term basis in exchange for compensation. The Zoning Board of Appeals finds that a short-term rental was permitted in one of the two residential zoning districts (Residence District B) as a tourist home from 1963 through February 7, 1974. The Zoning Board of Appeals finds that since February 7, 1974, a short-term rental has been considered a commercial use of property that primarily serves tourists and transient users, falling within the definitions of motel and tourist home and therefore excluded from the definition of a dwelling. The Zoning Board of Appeals finds that since February 7, 1974, a short-term rental has only been a permitted use in the C-2 Resort Service Commercial District, and not a permitted use in any residential zoning district other than a Planned Unit Development where they were specifically approved. The ZBA finds that each individual property owner must separately demonstrate the establishment of a lawful use of their

property as a short-term rental in a residential zoning district where it was permitted prior to February 7, 1974, without abandonment, to continue a short-term rental of the property as a nonconforming use pursuant Section 38-631 of the Park Township Zoning Ordinance.

Findings and Basis for Interpretation Decision

The Zoning Board of Appeals finds that the term “short-term rental” was not in common usage until recently, within the past decade, even if property owners may have rented out their properties on a short-term basis prior to the term becoming more commonly used. The Zoning Board of Appeals finds that there are two key factors regarding the use of a property for a short-term rental: first, a short-term rental involves the exchange of compensation for lodging accommodations; and second, a short-term rental involves transients, meaning the occupants who are paying for the lodging are doing so on a short-term basis. The Zoning Board of Appeals finds that based on these two factors collectively, the use of a property as a short-term rental is by its very nature a commercial use of the property, not a residential use.

(1) The Zoning Board of Appeals finds that the Township Zoning Ordinance in effect from 1963 until February 6, 1974, permitted the use of dwellings as short-term rentals in at least one of the residential zoning districts (Residence District B).

In answering the fourth question raised in the Application, but the first question that the Zoning Board of Appeals believes should be answered both logically and chronologically, the Zoning Board of Appeals has relied in large part on the Township staff’s presentation of the history of zoning in Park Township. Based on the Township staff’s review of Township files, the Park Township Board adopted the Township’s first Zoning Ordinance in 1946, which divided the Township into four zones based on their use category: a residential zone, a commercial zone, an industrial zone, and an agricultural zone. The Application did not ask the Zoning Board of Appeals for any interpretation related to this 1946 Zoning Ordinance.

The Zoning Board of Appeals finds that the Township Board adopted a successor Zoning Ordinance in 1963. The 1963 Zoning Ordinance separated the Township zoning districts into two separate residential districts (A and B), one commercial district, one industrial district, and one agricultural district. The Zoning Board of Appeals finds that the 1963 Zoning Ordinance included five relevant definitions:

- Cabins (Article II, Section 9);
- Dwelling (Article II, Section 12);
- Hotel (Article II, Section 24);
- Lodging House (Article II, Section 25); and
- Tourist Home (Article II, Section 37).

The 1963 Zoning Ordinance defined “cabins” as follows:

Section 9. Cabins. Any building, tent or similar structure which is maintained, offered or used for dwelling or sleeping quarters for transients, or for temporary residence, but shall not include what are commonly designated as hotels, lodging houses or tourist home.
[sic]

The Zoning Board of Appeals finds that the definition of “cabins” in effect between 1963 and February 6, 1974, specifically excluded lodging houses and tourist homes. Therefore, the Zoning Board of Appeals finds that short-term rentals did not fall within the definition of “cabins” in effect during that timeframe, for the reasons explained below.

The 1963 Zoning Ordinance defined “dwelling” as follows:

Section 12. Dwelling. Any building or part thereof, occupied as the home, residence, or sleeping place of one or more persons either permanently or transiently, except automobile trailers and cabins.

The Zoning Board of Appeals finds that the definition of a “dwelling” in effect between 1963 and February 6, 1974 did not specifically exclude lodging houses or tourist homes, and therefore could include the short-term rental of a dwelling used as a lodging house or a tourist home, as explained below.

The 1963 Zoning Ordinance defined “hotel” as follows:

Section 24. Hotel. A building where lodging with or without meals is furnished to transient or resident guests for compensation and containing more than four (4) rooms for sleeping and having no cooking facilities in any individual lodging, but wherein a restaurant may or may not be located.

The Zoning Board of Appeals finds that the definition of “hotel” in effect between 1963 and February 6, 1974 requires a hotel to have more than four rooms for sleeping, and therefore it does not encompass all short-term rentals, as not all short term rentals would contain more than four sleeping rooms, though it is possible that some short-term rentals (e.g., those with more than four rooms for sleeping) may have fallen within the definition of a hotel during that time.

The 1963 Zoning Ordinance defined “lodging house” as follows:

Section 25. Lodging House. Primarily a family dwelling where lodging with or without meals is furnished on a weekly, monthly or any paying basis to one or more persons who are not members of the family occupying and operating the premises but not necessarily to anyone who may apply.

The Zoning Board of Appeals finds that the use of a property for a short-term rental (i.e., providing lodging accommodations in exchange for compensation on a transient/short-term basis) could fall within the definition of a “lodging house” in effect between 1963 and February 6, 1974.

The 1963 Zoning Ordinance defined “tourist home” as follows:

Section 37. Tourist Home. Primarily a family dwelling where lodging with or without meals is furnished for compensation chiefly on an overnight basis and mainly to transients, but not necessarily to anyone who may apply.

The Zoning Board of Appeals finds that the use of a property for a short-term rental (i.e., providing lodging accommodations in exchange for compensation on a transient/short-term basis) falls within the definition of a “tourist home” in effect between 1963 and February 6, 1974.

Based on the above definitions, because the definition of a dwelling did not exclude lodging houses or tourist homes, and because a short-term rental would meet the definition of either or both a lodging house or a tourist home under the 1963 Zoning Ordinance, the Zoning Board of Appeals finds that a short-term rental was not excluded from a dwelling. The Zoning Board of Appeals further finds that the 1963 Zoning Ordinance allowed not only single-family dwellings but also hotels and motels in the Residence District “A” provided that “such hotels and motels shall only be erected upon the Board of Appeals approving the location and the conditions of erection.” The Zoning Board of Appeals finds that the 1963 Zoning Ordinance allowed not only those uses permitted in Residence District A (e.g., including single family dwellings, and hotels and motels with Board of Appeals approval) in the Residence District “B”, but also specifically permitted “tourist room business for the housing of transient travelers” along with lodging houses.

Because what is now commonly referred to as a short-term rental of a single-family home would have clearly been covered by the definition of a tourist home, and because a tourist home was not excluded from the definition of a dwelling and was specifically permitted in Residence District “B,” the Zoning Board of Appeals finds that short-term rentals were permitted under the 1963 Zoning Ordinance in at least one of the two residential zoning districts.

(2) The Township’s Zoning Ordinance adopted in 1974, which has remained in effect from February 7, 1974 to present, did not and does not permit the use of dwellings or any property as a short-term rental in any of the residential zoning districts, neither as adopted nor as amended. The appropriate end date for establishing nonconforming status for the short-term rental use of a dwelling or property in any residential zoning district is therefore February 7, 1974.

The Zoning Board of Appeals finds that the Township Board adopted the current Park Township Zoning Ordinance in 1974, which became effective February 7, 1974, and which has since been amended multiple times over the years. The current Township Zoning Ordinance has been codified in Chapter 38 of the Park Township Code of Ordinances.

The Zoning Board of Appeals will address this issue in two parts, the first part as the Zoning Ordinance was originally adopted in 1974, and the second part as the Zoning Ordinance has been amended.

(2A) The use of a property as a short-term rental falls within the definition of a “motel” and also potentially within the definition of a “tourist home” under the Township Zoning Ordinance as originally adopted in 1974, which was specifically excluded from the definition of a “dwelling” and therefore the Zoning Ordinance did not permit the use of dwellings as short-term rentals in any of the residential zoning districts when originally adopted in 1974.

When the Township Board adopted the Township Zoning Ordinance in 1974, it modified a number of the relevant definitions. Section 3.13 of the Zoning Ordinance as originally adopted in 1974 defined “dwelling” as follows:

SECTION 3.13 DWELLING. Any building or portion thereof which is occupied in whole or in part as a home, residence, or sleeping place, either permanently or temporarily, by one or more families, *but not including motels, hotels, tourist rooms* or cabins, or mobile homes.

(a) Dwelling, Single-Family--A building designed for use and occupancy by one (1) family only.

(b) Dwelling, Two-Family--A building designed for use and occupancy by two (2) families only.

(c) Dwelling, Multi-Family--A building designed for use and occupancy by three (3) or more families.

The Zoning Board of Appeals finds that this definition of dwelling can be distinguished from the definition contained in the previous 1963 Zoning Ordinance, as the 1974 definition of a dwelling specifically excludes various short-term rental uses, such as motels, hotels, and tourist rooms (i.e., uses involving the provision of lodging accommodations in exchange for compensation on a transient/short-term basis). For the reasons explained in further detail below, because the use of a property for a short-term rental falls within the definition of either a motel or tourist home, the Zoning Board of Appeals finds that the definition of a dwelling contained in the Zoning Ordinance as originally adopted in 1974 excluded short-term rental uses. Further, because the prior definition of dwelling contained in the 1963 Zoning Ordinance did not exclude these uses, the Zoning Board of Appeals finds as a matter of fact that the Township Board intended to exclude these short-term rental types of uses from the definition of a dwelling as of February 7, 1974.

Section 3.27 of the Zoning Ordinance as originally adopted in 1974 defined “motel” as follows:

SECTION 3.27 MOTEL. A building or group of buildings on the same lot, whether detached or in connected rows, containing sleeping or dwelling units which may or may not be independently accessible from the outside with garage or parking space located on the lot and designed for, or occupied by automobile travelers. *The term shall include any building or building groups designated as motor lodges, transient cabins, or by any other title intended to identify them as providing lodging, with or without meals, for compensation on a transient basis.*

As previously noted in this Report, the Zoning Board of Appeals finds that the use of a property for a short-term rental involves providing lodging for compensation on a transient (e.g., short-term) basis.¹ The Zoning Board of Appeals finds that the use of a property for a short-term rental would therefore clearly and unambiguously fall within the definition of a motel under the Zoning Ordinance as originally adopted in 1974.

In addition, Section 3.40 of the Zoning Ordinance as originally adopted in 1974 defined “tourist home” as follows:

¹ While the term “transient” has not been defined in the Zoning Ordinance, Section 3.01 of the Zoning Ordinance as originally adopted in 1974 provided rules of construction that apply to the text of the Zoning Ordinance. Section 3.01(h) provides: “Any word or term not defined herein shall be considered to be defined in accordance with its common or standard definition.” This rule of construction applying to the text of the Zoning Ordinance remains unchanged as it has been codified at Section 38-5(8) of the Code of Ordinances. The common or standard definition of “transient” when used as an adjective (e.g., transient basis) is “lasting only for a short time.”

SECTION 3.40 TOURIST HOME. A building, other than a hotel, boarding house, lodging house, or motel, where lodging is provided by a resident family in its home for compensation, mainly for transients.

The Zoning Board of Appeals finds as a matter of fact that some property owners rented out their homes on a short-term (or even seasonal basis) at times when the property owners were not occupying their homes. Individuals have advised the Zoning Board of Appeals that they did this to help pay their taxes and/or mortgages. While the Zoning Board of Appeals is not sure of the extent to which this practice was occurring, the Zoning Board of Appeals finds that it was occurring, and that as noted above, it may have been a legal use in the Residence B zoning districts under the 1963 Zoning Ordinance. The Zoning Board of Appeals finds that the Township Board intended to exclude this type of use from the definition of a dwelling, and therefore also exclude this type of use from the residential zoning districts, with the adoption of the 1974 Zoning Ordinance.

The Zoning Board of Appeals rejects the Applicant's argument that the "Park Township Neighbors" members' homes cannot be considered a tourist home. The Applicant focuses on the phrase "by a resident family in its home" and argues that because (a) a "home" can be defined as "one's place of residence", and (b) a "family" is defined in the Zoning Ordinance as "one or more persons occupying a single dwelling unit...", and (c) the property owners do not occupy the structure as their place of residence at the same time that they rent the property to transient guests, the use of their property as a short-term rental does not meet the definition of a tourist home. The Zoning Board of Appeals rejects the Applicant's argument for two primary reasons.

First, the Zoning Board of Appeals finds that the Applicant uses the term "occupying" too narrowly, as if the resident family must occupy the structure simultaneously with the transient guests to be considered a tourist home. The Zoning Ordinance states that the term "occupied", when used in the Zoning Ordinance, "shall be construed to include the words intended, arranged, or designed to be used or occupied." (See Applicant's Exhibit 1, Section 38-5(7) of the Zoning Ordinance.) The Zoning Board of Appeals finds that the definition of "family" as being "one or more persons occupying a single-family unit" only requires that the structure be designed for the property owner's occupancy, not that that property owner must actually reside in the home simultaneously when providing lodging for transient guests. The property owner may maintain occupancy of their home by controlling who and when someone else may be present in, or even live in, the home. Also, the property owner's occupancy is maintained by the fact that furnishings and other personal property such as furnishings that the property owner owns (to enable the home's rental) remain in the home during the time of rental.

Second, the Zoning Board of Appeals finds that if a property owner never resides in or occupies their property as the property owner's home or residence, but only provides lodging to transient guests (e.g., only rents the property out to tourists on a transient or short-term basis), then such use of the property is clearly just a commercial use (e.g., as defined as a motel in the Zoning Ordinance as originally adopted in 1974), and is not listed as a permitted use in a residential district.

The Zoning Ordinance as originally adopted in 1974 divided the Township into the following ten mapped zoning districts:

1. AG Agricultural and Permanent Open Space District
2. R-1 Rural Estate Residence District
3. R-2 Lakeshore Residence District

4. R-3 Low Density Single-Family Residence District
5. R-4 Medium Density Single and Two-Family Residence District
6. R-5 Low Density Multi-Family Residence District
7. R-6 Medium Density Multi-Family Residence District
8. PUD Planned Unit Development District
9. C-1 Neighborhood Business District
10. C-2 Resort Service District

Each of the ten zoning districts lists the only uses that are permitted within the respective zoning district. For example, the section of the Zoning Ordinance that sets forth the use regulations for each respective zoning district states: “Land, buildings and structures in this Zoning District may be used for the following purposes only:” and then lists the permitted uses for that district.² The Zoning Board of Appeals finds that any use that was not listed as a permitted use would therefore be a prohibited use in the respective zoning district.

The Zoning Board of Appeals finds that the Zoning Ordinance as originally adopted by the Township Board in 1974 no longer permitted motels or tourist homes in any of the residential zoning districts (unlike the 1963 Zoning Ordinance, which allowed motels in both residential zoning districts with zoning board approval, and allowed tourist homes in the Residence District “B”). Specifically, sections 7.02 (R-1), 8.02 (R-2), 9.02 (R-3), 10.02 (R-4), 11.02 (R-5), and 12.02 (R-6) of the Zoning Ordinance as originally adopted by the Township Board did not list motels or tourist homes as a permitted use as of February 7, 1974. Because a short-term rental of a property falls within the definition of a motel or tourist home, and because motels and tourist homes were not specified as a permitted use in any residential zoning district, the Zoning Board of Appeals finds that short-term rentals were no longer a permitted use in any of the residential zoning districts beginning February 7, 1974.

The Zoning Board of Appeals finds that this is supported not only by the definition sections noted above but also supported by two other sections of the Zoning Ordinance. First, Section 16.01 of the Zoning Ordinance as originally adopted in 1974 set forth the description and purpose of the C-2 Resort Service District, which is specifically for commercial uses that primarily serve tourists and seasonal residents. Throughout this process, Attorney Konwinski or many of the property owners whom he represents in this Application have noted how important short-term rentals are for tourists and the impact they have on the regional economy in the Holland and West Michigan area. Second, Chapter 17 of the Zoning Ordinance as originally adopted in 1974 set forth the parking requirements. In Section 17.01, a different minimum amount of parking spaces were required based on the use category. For example, 17.01(a) required that a structure used as a dwelling must have a minimum of two parking spaces for each dwelling unit; 17.01(b) required that a structure used as lodging, rooming, and boarding houses must have a minimum of two parking spaces for each three guest rooms or each six beds for guests, whichever is greater; Section 17.01(h) required that a structure used as a motel or tourist home must have one parking space for each sleeping room.

The Zoning Board of Appeals finds as a matter of fact that the legislative intent of the Township Board was to restrict motels to the commercial C-2 Resort Service District beginning in February of 1974.

² See Sections 6.02 (AG), 7.02 (R-1), 8.02 (R-2), 9.02 (R-3), 10.02 (R-4), 11.02 (R-5), 12.02 (R-6), 14.02 (C-1), and 16.01 (C-2).

And as noted above, the Zoning Board of Appeals finds that the use of a property for a short-term rental clearly and unambiguously falls within the definition of a motel or “tourist home” under the Zoning Ordinance as originally adopted in 1974.

(2B) The use of a property as a short-term rental continues to fall within the definition of a “motel” or the definition of a “tourist home” under the Township Zoning Ordinance as amended, which are both specifically excluded from the definition of a “dwelling” and therefore the Zoning Ordinance has continuously not permitted the use of dwellings as short-term rentals in any of the residential zoning districts since February 7, 1974.

The Township Board has amended the Zoning Ordinance multiple times over the past 50 years since the Zoning Ordinance took effect on February 7, 1974. For the reasons explained below, the Zoning Board of Appeals finds as a matter of fact that none of these amendments were intended to change the position of the Township Board that motels and tourist homes (effectively, the use of a property for a short term rental) were: (a) intended to be excluded from the definition of a dwelling, and (b) not intended to be a permitted use in any residential zoning district. The Zoning Board of Appeals finds as a matter of fact that the intent of the Township Board was to exclude short-term rental uses from the definition of a dwelling and from residential zoning districts beginning in February of 1974.

On August 14, 2003, the Township Board adopted Zoning Ordinance Amendment ZA 51, which took effect on September 5, 2003. This Zoning Ordinance Amendment (ZA 51) amended various relevant definitions (e.g., “dwelling” and “motel”), added a definition of “hotel,” and amended and restated the C-2 Resort Service District, including Section 16.06 Hotel/Motel/Resort regulations.

The Zoning Board of Appeals finds that while the Township Board changed the definition of a dwelling, the Township Board has continually excluded hotels, motels, and tourist rooms from the definition of a dwelling in the Zoning Ordinance. The Zoning Board of Appeals finds, therefore, that if the use of a property as a short-term rental continued to fall within the definition of any of these other terms as defined by the Zoning Ordinance as amended, then the use of a property as a short-term rental would continue to be excluded from the definition of a dwelling.

The Zoning Board of Appeals finds that the definition of “tourist home” has remained unchanged since February 7, 1974. For the reasons explained in Part 2A of this Report, the Zoning Board of Appeals finds that the Township Board intended to exclude this type of use from the definition of a dwelling, and therefore also exclude this type of use from the residential zoning districts, with the adoption of the 1974 Zoning Ordinance.

The Zoning Board of Appeals finds that the definition of “motel” was amended by Zoning Ordinance ZA 51 in 2003, but has remained unchanged since ZA 51 took effect on September 5, 2003.

The Applicant has argued that because ZA 51 added the phrase “commercial establishment consisting of” to the definition of motel, the use of a property as a short-term rental would no longer fall within the definition of a motel following the effective date of ZA 51. In support of his position, Attorney Konwinski has relied predominantly on definitions contained within Black’s Law Dictionary (6th Edition) and federal law defining a commercial establishment [17 USC §119 (d)(12)].

The Zoning Board of Appeals finds that when interpreting the Zoning Ordinance, any word that is not defined in the Zoning Ordinance shall be considered to be defined in accordance with its common or

standard definition. Section 38-5(8) of the Park Township Zoning Ordinance (formerly Section 3.01(h) of the Zoning Ordinance as originally adopted in 1974), which provides: “Any word or term not defined herein shall be considered to be defined in accordance with its common or standard definition.” The Zoning Board of Appeals is not compelled to review a legal dictionary or a federal law that pertains to copyrights.³ Rather, the Zoning Board of Appeals must consider the common or standard definition of the undefined terms.

The Zoning Board of Appeals finds as a matter of fact that the use of a property for a short-term rental (e.g., the use of a building designed as a house to provide lodging accommodations on a transient or short-term basis in exchange for compensation) would fall within the common or standard definition of the words “commercial establishment.” The Merriam-Webster Online dictionary does not define the phrase “commercial establishment, but does define each individual word. The Merriam-Webster Online dictionary defines the adjective “commercial” as: “occupied with or engaged in commerce or work intended for commerce” and “of or relating to commerce” and “viewed with regard to profit.”⁴ The Merriam-Webster Online dictionary defines the noun “establishment” as follows:

1: something established: such as

a: a settled arrangement

especially : a code of laws

b: established church

c: a permanent civil or military organization

d: a place of business or residence with its furnishings and staff.⁵

As previously and repeatedly noted, the use of property as a short-term rental involves the property owner providing their house for lodging in exchange for compensation on a transient and short-term basis. These properties are being advertised for use as short-term rentals on websites such as Airbnb and VRBO, which are each multi-billion dollar companies engaged in the online marketing of short-term rentals.⁶ The Zoning Board of Appeals finds as a matter of fact that a short-term rental is a commercial use, as the use of the house for lodging in exchange of compensation on a transient or short-term basis is clearly an established structure that is engaged in commerce.

The Zoning Board of Appeals finds that there is no merit to the Applicant’s argument that the Township Board intended to exclude short-term rental uses from the definition of motel when the Township Board amended that definition in 2003. For the reasons stated above, the Zoning Board of Appeals finds that a short-term rental is a commercial use and the record does not support a finding that

³ See 17 USC §119, which specifically pertains to limitations on the use of exclusive copyrights, involving the secondary transmissions of distant television programming by satellite. See also Deposition of Kirk Briggs, page 47, lines 1 through 8, where Attorney Konwinski acknowledges that 17 USC §119 pertains to Title 17, copyrights.

⁴ See <https://www.merriam-webster.com/dictionary/commercial>.

⁵ See <https://www.merriam-webster.com/dictionary/establishment>.

⁶ According to the Staff report, Airbnb had a market cap of over \$80 billion as of March 2025, and Expedia, which owns VRBO, had a market cap of over \$22 billion as of March 2025.

the Township intended to relax the restrictions or prohibitions on short-term rentals when it adopted a minor amendment to the definition of “motel” in 2003.

The Zoning Board of Appeals finds as a matter of fact that the Township Board did not intend to exclude short-term rentals (the use of the house for lodging in exchange of compensation on a transient or short-term basis) from the definition of a motel by adding the words “commercial establishment” to that definition in 2003. The Zoning Board of Appeals finds that as a matter of fact the use of a property as a short-term rental is a commercial use that involves a commercial establishment, which has continued to fall within the definition of a motel in the Township Zoning Ordinance, even as that definition was amended in 2003. As such, the Zoning Board of Appeals finds that the use of property for a short-term rental was and has continued to be excluded from the definition of a dwelling continuously since February 7, 1974. Therefore, the Zoning Board of Appeals finds that the use of a property for a short-term rental has not been permitted in any residential zoning district in the Township since February 7, 1974.

The ZBA finds that a property owner must demonstrate the establishment of a lawful use of their property as a short-term rental in a residential zoning district where it was permitted prior to February 7, 1974, without abandonment, to continue a short-term rental of the property as a nonconforming use pursuant Section 38-631 of the Park Township Zoning Ordinance.

(3) The Zoning Board of Appeals finds that neither the Michigan Zoning Enabling Act nor the Township Zoning Ordinance empower the Zoning Board of Appeals to have the jurisdiction and authority to determine whether the Township should be estopped from enforcing the Zoning Ordinance, as interpreted by the Zoning Board of Appeals, or to determine whether the Zoning Ordinance was unconstitutionally vague.

The Zoning Board of Appeals has only the limited authority and jurisdiction granted to it by the State of Michigan, through the State Constitution and the Michigan Zoning Enabling Act. Article VI of the Michigan Zoning Enabling Act generally governs zoning boards of appeals throughout the state. (See MCL 125.3601 through 125.3607.)

Section 603 of the Michigan Zoning Enabling Act empowers the ZBA to “hear and decide questions that arise in the administration of the zoning ordinance” as well as “hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance...”. (See MCL 125.3603(1).)

In addition to providing for an application for a variance, Section 604 of the Michigan Zoning Enabling Act provides that an appeal to the ZBA “may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government.” (See MCL 125.3604(1).) Section 604 requires the ZBA to “state the grounds of any determination” made by the ZBA. (See MCL 125.3604(1).) Subsection 604(5) also provides that the ZBA may receive written requests for an interpretation of the zoning ordinance and requires a public hearing in such an instance. (See MCL 125.3604(5).)

Section 38-66 of the Township Zoning Ordinance establishes the jurisdiction and powers of the Park Township Zoning Board of Appeals, and states as follows.

Chapter 38. Zoning, ARTICLE II. Administration and Enforcement, DIVISION 2. Zoning Board of Appeals

Sec. 38-66. Jurisdiction and powers.

The Zoning Board of Appeals shall have all powers and jurisdiction granted by the Zoning Act, all powers and jurisdiction prescribed in other articles of this chapter and the following specific powers and jurisdiction:

- (1)** The jurisdiction and power to hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official or body charged with enforcement of this division; excluding, however, decisions regarding the authorization of special uses and planned unit developments which are made by the Township Board or Planning Commission.
- (2)** The jurisdiction and power to act upon all questions as they may arise in the administration and enforcement of this division, including interpretation of the Zoning Map.
- (3)** The jurisdiction and power to decide matters referred to the Zoning Board of Appeals for decision pursuant to Section 603 of the Zoning Act (MCL § 125.3603).
- (4)** The jurisdiction and power to authorize, upon appeal, a variance or modification of this chapter where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this chapter so that the spirit of this chapter shall be observed, public safety secured and substantial justice done.

While the Zoning Board of Appeals has the jurisdiction and authority to hear appeals and act upon questions as they may arise in the administration and enforcement of the Zoning Ordinance, such as the interpretation questions 1 and 4 raised by the Application, the Zoning Board of Appeals believes that questions 2 and 3 raised in the Application exceed the jurisdiction and authority of the Zoning Board of Appeals. The Zoning Board of Appeals believes that the matters raised by question 2 (whether the Township should be estopped from enforcing the Zoning Ordinance as interpreted by the Zoning Board of Appeals) and by question 3 (that the Zoning Ordinance is unconstitutionally vague) are questions of law best left to the jurisdiction and authority of our court system.

The Zoning Board of Appeals is confident that the court system will apply the appropriate law, such as the doctrine of municipal nonestoppel, if applicable, fairly on a case-by-case basis in the event any individual property owner seeks an injunction against the Township from enforcing the Zoning Ordinance as lawfully adopted by the Township Board and interpreted by the Zoning Board of Appeals. Additionally, the Zoning Board of Appeals is confident that a court of competent jurisdiction will agree that under the Michigan Zoning Enabling Act and the Township Zoning Ordinance, only the Township Board may amend the Zoning Ordinance. No Township official, including the Township supervisor, the Township manager, the Township zoning administrator, or the Township attorney, can unilaterally amend the Zoning Ordinance by giving an answer to a zoning question. And, even if municipal nonestoppel was applied, it would be applied only on a case-by-case basis, not against the Zoning Ordinance or Township as a whole. Further, the only public body authorized by law to officially interpret the Zoning Ordinance is the Zoning Board of Appeals. The Applicant has not provided any evidence that any individual property owner

of a short-term rental sought or obtained an interpretation from the Zoning Board of Appeals regarding whether short-term rentals are allowed under the Park Twp Zoning Ordinance prior to the present Application

The Zoning Board of Appeals is not rendering a decision on questions 2 or 3 based on the understanding those are questions of law to be decided by the courts, not questions of interpretation of the Zoning Ordinance.