Village of Elberta

ZONING ORDINANCE

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ARTICLE 1: TITLE & PURPOSE

1.1 SHORT TITLE

This Ordinance shall be known as the "Village of Elberta Zoning Ordinance" and will be referred to herein as "this Ordinance".

1.2 PURPOSE

In accordance with the authority and intent of the Michigan Zoning Enabling Act, PA 110 of 2006 as amended, the Village desires to provide for the orderly development of the Village, which is essential to the wellbeing of the community, and which will place no undue burden upon developers, industry, commerce, or residents. This Ordinance establishes zoning districts in the Village of Elberta within which the use of land for recreation, residence, commercial trade and other uses of land may be encouraged, regulated or prohibited and for such purposes dividing the Village into districts and areas deemed best suited to carry out the provisions of this Ordinance, and for each district designates or limits the location, the height, and size of dwellings, buildings and structures that may be erected or altered, and the specific uses for which dwellings, buildings and structures that may be erected or altered; the area of yards, courts and other open spaces, and the water, sanitary, safety and protective measures that shall be required for such dwellings, buildings and structures; the maximum number of families which may be housed in buildings, dwellings and structures; and protects and promotes public health, safety and welfare. The Village further desires:

A. To promote the safety, health, and general welfare of the Village;

B. To encourage the use of land in the Village in accord with its character and suitability for particular purposes;

C. To lessen congestion on public streets and highways;

D. To facilitate the adequate provision of streets and highways, water supply and sewage disposal systems;

E. To ensure compatibility between land uses and to preserve property values by establishing standards for physical development.

1.3 AREA OF JURISDICTION

The provisions of this Ordinance shall apply to all land, waterways, and every building and/or structure thereon, within the boundaries of the Village of Elberta, Benzie County, Michigan, (hereinafter referred to as the "Village"), and shall extend vertically. The concurrent jurisdiction of other governmental entities shall not limit the jurisdiction of the Village to regulate land uses or other activities within the Village, unless specifically exempted by law.

1.4 AUTHORITY

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This Ordinance is adopted pursuant to the Michigan Zoning Enabling Act, 2006 PA 110, as amended. Said Act is hereby made a part of this Ordinance, as if said Act were repeated verbatim herein.

1.5 INTERPRETATION AND APPLICATION

In their interpretation and application, any enforcement officer or agency, any court and any board or commission member shall hold the provisions of this Ordinance to be minimum acceptable standards and requirements adopted for the promotion of the health, safety, security and general welfare of the Village of Elberta.

The graphics, tables and text used throughout this Ordinance are regulatory. In case of a conflict, text shall control over tables or graphics; tables shall control over graphics. Photographs and illustrations marked "example" or text marked "commentary" is not regulatory and is provided for illustrative purposes only.

1.6 ZONING AFFECTS ALL STRUCTURES, LAND AND THE USE THEREOF

No structure, land or premises shall be used or occupied, and no building shall be erected, moved, reconstructed, altered or extended except in conformity with the regulations and provisions of this Ordinance.

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ARTICLE 2: GENERAL PROVISIONS

2.1 APPLICABILITY

All land uses in all Zoning Districts shall be subject to the provisions of this Article.

2.2 NONCONFORMITIES

In the event that any lawful use, activity, building, or structure which exists or is under construction at the time of the adoption of this Ordinance and is not in conformance with the provisions of the zoning district in which it is located, such use, activity, building, or structure shall be considered a legal nonconformity and shall be allowed to remain as such. Nonconformities are regulated by Article 10.

2.3 PERFORMANCE STANDARDS

A. Smoke and Air Contaminants. It shall be unlawful for any person, firm, or corporation to permit the emission of any smoke or air contaminant in violation of air quality standards adopted by Federal and/or State regulatory authorities.

B. Drifted or Blown Material. Property owners shall take appropriate measures to ensure the prevention of the drifting of airborne particles or debris beyond their lot lines. Any such activity shall be promptly abated upon notification by the Village. During times of stockpiling or removal, excavation, or grading, those measures, necessary and practical (dampening, etc.), will be taken to minimize the blowing and drifting of material.

C. Odors. Any condition or operation which results in the creation of odors of such intensity and character as to be detrimental to the health and welfare of the public or which interferes unreasonably with the comfort of the public shall be removed, stopped, or so modified as to remove the odor. The provisions of this Section are not intended to apply to farming activities.

1. For new facilities (commercial or industrial), the most recent technologies shall be utilized to reduce odors, as part of or in addition to any conditions included in State and/or Federal regulatory agency air/water quality permit(s). As part of the Zoning Permit review, the applicant shall demonstrate that all measures technologically available and financially viable to mitigate the emission of noxious odors will be incorporated into the design of the facility.
2. For existing commercial and industrial facilities, odors resulting from the production process that are within the limits established by State and/or Federal regulatory agencies in approved permits shall not be considered in violation of this Ordinance. This does not exempt any business from the responsibility to take all necessary technologically feasible and financially viable measures to reduce such odors, and to comply to with any new standards required as part of a renewed or new State and/or Federal regulatory agency environmental permits.

D. Gases. The escape or emission of any gas which is injurious or destructive, harmful to person or property, or explosive shall be unlawful and shall be abated.

E. Glare and Heat. Any operation producing intense glare or heat shall be performed within an enclosure

so as to completely obscure and shield such operation from direct view from any point along the lot line, except during the period of construction of the facilities to be used and occupied.

F. Noise. Noise, which is objectionable to a person of reasonable sensibilities due to volume, or frequency shall be muffled, attenuated, or otherwise controlled. In addition, sounds of an intermittent nature that are objectionable to a person of reasonable sensibilities, or sounds characterized by high frequencies, shall be so controlled so as not to become a nuisance to adjacent uses. Sirens and related apparatus used solely for public purposes are exempt from this requirement. Noise resulting from temporary construction activity shall also be exempt from this requirement.

G. Vibration. All machinery shall be so mounted and operated that vibration from sound or noise at any lot line shall not be so intrusive as to interfere with normal daily activities in adjoining land uses. Vibrations resulting from temporary construction activity shall be exempt from the requirements of this Section.

Commented [NE1]: This is example language of performance standards for the items included in the previous version of the section.

2.4 PRINCIPAL USE

Only one principal use shall be permitted on a lot, except as specified otherwise. A single-family dwelling, other than a farm dwelling, shall constitute a principal use. Only one principal single-family dwelling shall be permitted on a lot.

2.5 BARRIER FREE MODIFICATION

Nothing in this Ordinance shall prevent the modification of a non-residential building only as may be necessary to comply with barrier-free requirements and the Americans with Disabilities Act. A variance may be required.

2.6 RESTORATION OF UNSAFE BUILDINGS

Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition any part of any building or structure declared unsafe by the Zoning Administrator, County Building Official, or Public Health Inspector.

2.7 RELOCATION OF BUILDINGS

The relocation of a building to a different location in the Village shall be the same as erection of a new building, and all applicable provisions, regulations, and required permitting shall be followed and obtained.

2.8 DEMOLITION OF BUILDINGS

No structure shall be demolished until a demolition permit has been issued by the Zoning Administrator. The demolition shall be completed within such reasonable time period as shall be prescribed by the Village and under conditions that may be specified as necessary to protect the public health, safety and welfare. The demolition of structures within the Village shall comply with the following:

A. An application for a Demolition Permit shall include the reasons for the demolition and the intended use of the property following demolition. If the intended use is not permitted under the property's current

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zoning, a Demolition Permit shall be withheld until such time as approval for the new use is obtained, unless the property is deemed a hazard or unattractive nuisance to the general public.

B. Following demolition of the structure and the removal of all required debris, any excavation or foundation shall be backfilled with clean fill and the site graded to meet existing finished grade at the property lines and prevent drainage of surface water onto adjacent properties.

C. Following grading, all non-paved areas shall be top dressed with a minimum two (2) inches of topsoil and seeded with an appropriate native grass seed.

D. An accessory building shall not be allowed to remain on a property without a principal structure unless a bond is put in place to cover the Village's cost to remove it. With a bond in place the accessory building may remain on the property for up to two (2) years. The accessory building shall be properly maintained at all times so that it can be used for its intended purpose.

2.9 ZONING OF VACATED AREAS

Whenever any street, alley, highway, or other public right-of-way within the Village has been abandoned by official government action, such right-of-way property shall automatically acquire and be subject to the provisions of the Zoning District of the abutting property. In the case of an abandoned right-of-way which also serves as the district boundary, the centerline of the right-of-way shall be the district boundary.

2.10 YARD SETBACK PROJECTIONS

Architectural features may encroach into required yard setbacks as follows:

A. Cornices, eaves, sills, fireplaces, flues, ornamental features and other similar features may extend or project into a required yard setback a distance of not more than twenty-four (24) inches.

B. Uncovered and unenclosed ground story decks, patios, or terraces less than thirty (30) inches above grade may project into a required rear or side yard setback a maximum distance of fifty percent (50%) of the rear or side yard setback for the zoning district in which it is located, and ten (10) feet into a required front yard.

C. Covered or enclosed porches that extend from the ground floor level of a residential structure may project into a required front yard setback a maximum of five (5) feet.

D. No permitted projection shall be allowed to encroach into a public right-of-way.

2.11 ACCESSORY BUILDINGS AND STRUCTURES

A. Accessory buildings shall not be erected prior to principle building but can be built simultaneously. Accessory buildings may be erected along with a principal building. Accessory buildings may be connected to a principal building with a roof, breezeway, or similar structure, or may be completely detached. If attached to the principal building, an accessory building shall be made structurally a part of it and shall comply in all respects with the requirements applicable to the principal building under this Ordinance.

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B. Detached accessory buildings shall be governed by the dimensional regulations within Article 3 of this Ordinance.

C. Swimming Pools. All pools must meet the following conditions:

1. Pools may be installed in the side or rear yard of a lot.

2. In-ground pools shall require a fence, not less than 5 feet in height, to entirely enclose the in-ground pool for safety purposes. The support posts thereof shall be constructed in a permanent manner and in such a way as to last for the duration of such in-ground pool. Such posts shall be spaced at intervals of not more than 8 feet.

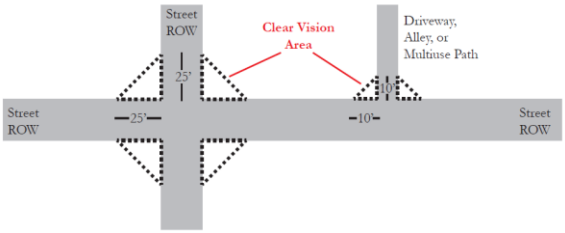
3. Every gate or other opening in the fence shall be designed and maintained to prevent entry of persons, except as permitted by the owner.

4. Pools shall comply with the required setbacks for structures.

2.12 CLEAR VISION AREAS

A. All streets, multiuse paths, right-of-way easements, alleys or driveways that intersect a street with a posted speed of thirty-five (35) miles per hour or greater shall establish a clear vision area in which no plantings, signs, fences or structures shall be installed or maintained between a height of three (3) and ten (10) feet above grade.

B. The clear vision area shall be a triangular area formed at the intersection with any street by a straight line drawn between right-of-way or easement lines at the following distances:



5. Street: Twenty-five (25) feet

6. Multiuse Path: Ten (10) feet

7. Driveway: Ten (10) feet

8. Alley: Ten (10) feet.

2.13 FENCES

Fences are permitted subject to the following regulations:

A. General Fence Requirements:

1. All fences shall be entirely on the property that they serve and allow for the owner to maintain the fence without trespassing on the neighboring property.
2. If a fence is to be erected on a property line both property owners must consent to its location in writing.

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3. The maximum height of a fence shall be measured from the surrounding finished grade to the top of the fence for the entire length of the fence.
4. All fences shall be erected with the finished or decorative side facing outward from the lot that it serves.
5. Fences erected within the front yard shall be decorative in nature. Examples of appropriate fences for the front yard are but not limited to split rail, picket and wrought iron.
   *Exception: Corner lots. For the purpose of front yard fencing on corner lots, fences are permitted to meet the side yard fence requirements from the rear building line to the rear lot line.
   6. Fence heights are subject to the district regulation in which the fence located.

B. Prohibition in right-of way: No fence shall be erected within public rights-of-way.

C. Restrictions: Fences shall not be made of chicken wire or contain an electric current or charge of electricity. Barbed wire, spikes, nails or any other sharp instruments of any kind are prohibited on top of or on the sides of any fence. However, fences protecting public utilities and public property may use barbed wire or other security fencing measures.

D. Maintenance: All fences shall be maintained in an upright position with all parts intact. Any fence which is not maintained, as determined by the Zoning Administrator, shall be removed or replaced at the owner's expense.

E. Invisible Fences: Use of an invisible fence shall be identified with a posted sign clearly visible from the street or public right-of-way.

2.14 HEIGHT EXCEPTIONS

The following structural appurtenances shall be permitted to exceed the height limitations for authorized uses provided they are in compliance with the Benzie County Building Code:

A. Ornamental in purpose, such as church steeples, belfries, cupolas, domes, ornamental towers and flagpoles provided such structural elements do not exceed 20% of the gross roof area.

B. Appurtenances to mechanical or structural functions such as chimneys and smokestacks, water tanks, ventilators and communications towers provided, however, that the Planning Commission may place height limits as part of site plan review or special use approval.

2.15 KEEPING OF ANIMALS

The keeping of poultry, pigs, horses, or other such livestock for personal use is allowed in the C, NR and FR Districts, provided the parcels of land are two and one half (2.5) acres or greater in size with a minimum width of two hundred (200) feet. Animals shall be properly housed and fenced as to not trespass.

The keeping of up to six (6) chickens for personal use shall be allowed in all zoning districts. The chickens shall be kept in a fenced enclosure, and roosters shall not be allowed.

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2.16 PERSONAL SOLAR ENERGY SYSTEMS

Personal solar energy systems shall be permitted as an accessory use and structure where the primary purpose is to provide energy for on-site consumption. Personal solar energy systems shall be subject to the following standards.

A. Roof-Mounted Personal Solar Energy Systems:

1. Height: The height of the roof-mounted solar installation shall not exceed the maximum allowed height for the structure it is mounted on in any zoning district.

2. Setback: Roof-mounted solar installations shall be considered part of the building and meet all applicable building setbacks.

3. Placement: Roof-mounted solar installations may be permitted on principal or accessory buildings. The color of the solar collector is not required to be consistent with other roofing materials.

4. Coverage: Roof-mounted solar installations shall be allowed to cover the entire roof upon which they are mounted.

5. Visibility and Glare: Roof-mounted solar installations shall be mounted or oriented so that concentrated solar glare will not be directed toward or onto nearby properties or rights of- way at any time of the day. Support structures shall be of a single, non-reflective matte finish that is consistent throughout the project.

6. Energy Sales: Excess energy generated by roof-mounted solar installations may be sold to a utility company and returned to the grid.

B. Ground-Mounted Personal Solar Energy Systems:

1. Height: The maximum height of a ground-mounted solar installation shall be sixteen (16) feet above grade at maximum tilt.

2. Setbacks: Ground-mounted solar installations shall comply with all district required setbacks.

3. Placement: Ground-mounted solar installations shall only be allowed in the rear or side yard on a property with an established permitted principal use. Placement in street-facing side yards of corner lots shall be prohibited.

4. Coverage: The area of the ground-mounted solar installation energy collection system shall count towards the maximum impervious coverage allowed for accessory buildings on properties with a principal use.

5. Visibility and Glare: Ground-mounted solar installations shall be mounted or oriented so that concentrated solar glare will not be directed toward or onto nearby properties or rights-of-way at any time of the day. Systems designed to track the maximum sun angle throughout the day shall be programmed to prevent positioning at any point that would result in glare directed

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toward nearby properties or rights-of-way. Support structures shall be of a single, non-reflective matte finish that is consistent throughout the project.

6. Energy Sales: Excess energy generated by ground-mounted solar installations may be sold to a utility company and returned to the grid.

2.17 PERSONAL WIND ENERGY SYSTEMS

A. Non-commercial personal wind energy systems and associated anemometer towers may be located in any district, provided the personal wind energy system or anemometer tower is set back from the property line a distance at least equal to the total height.

B. The maximum height shall be one hundred ten (110) feet.

C. Minimum blade clearance above the ground shall be fifteen (15) feet.

D. A personal wind energy system or associated anemometer tower shall not be artificially lighted unless required by the FAA.

E. Personal wind energy systems shall only be allowed in the rear or side yard on a property with an established permitted principal use. Placement in street-facing side yards of corner lots shall be prohibited.

F. All personal wind energy systems shall meet all side and rear setback requirements of the district in which they are located.

2.18 PRIVATE ROAD AND SHARED DRIVEWAY STANDARDS

A. Private Road Definition. For the purposes of these standards, a private road is a road owned and maintained by the owners of the properties it serves and that provides access to 4 or more dwelling units or parcels, or 4 or more non-residential principal buildings. Private roads include roads within site condominium projects, roads serving two family dwelling units and roads within office or industrial complexes. A private road may be used to provide public services such as utility easements, waste collection and emergency services.

B. Shared Driveway Definition and Standards. A shared private driveway serving 3 or fewer residential units shall be provided within an access easement recorded in the deeds of all parcels that have access to the driveway. The minimum finished surface width of the shared private driveway shall be 18 feet. A cul-de-sac turnaround may not be required if the length of the shared private driveway is 300 feet or less. For longer shared private driveways, a circular or hammerhead "T" turnaround shall be required depending on the length of the private driveway and the recommendation of the Fire Department. A proposed shared private driveway exceeding 1,000 feet in length or serving more than 3 residential units shall not be considered a shared private driveway and must be reviewed as a private road.

C. Exclusion for Multiple Family Drives. The definitions of "private road" or "shared private driveway" does not include drives serving multiple family buildings with 3 or more attached dwelling units, parking lot aisles or drives connecting parking lots to internal roads.

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D. Access to Public or Private Road. Any single-family residential lot or site created after the effective date of this Zoning Ordinance shall have frontage on and access to a public road right-of-way, an approved private road or shared private driveway meeting the definitions and standards of this Section.

E. Submittal Requirements for Private Roads. The following shall be submitted to the Village when applying for approval of a private road, either separately or in conjunction with a site plan as required by Article 7.

1. Parcel number and name of owner for all properties having legal interest in the private road.

2. Plans designed by a registered engineer showing location, dimension and design of the private road. The plan shall identify existing and proposed elevation contours within all areas to be disturbed or altered by construction of the private road.

3. Location of all public or private utilities to be located within the private road right-of-way or easement, or within 20 feet including, but not limited to: water, sewer, telephone, gas, electricity, and television cable.

4. Location of any lakes, streams, drainage-ways, MDNR regulated wetlands, or trees with a caliper of 8 inches or greater, within 100 feet of the proposed private road right-of-way or easement;

5. Evidence that property owners served by the road will provide financial and administrative mechanisms to ensure maintenance of the private road. A copy of a Private Road Maintenance Agreement shall be provided to the Village in a manner acceptable to the Village Attorney.

F. Design Standards. Private roads shall be constructed to the following design standards:

1. Road design: A private road shall meet the right-of-way width, street base, pavement width, surface, slope, drainage system and all other standards of the Village.

2. Reduced width to Preserve Natural Features: The minimum pavement width may be reduced to not less than 22 feet wide where the Planning Commission determines that the reduced width will preserve significant natural features and there is no alternative design that will preserve the natural features and meet the regular width standard.

3. Maximum length, cul-de-sac turnarounds: Maximum length of a private road providing access to more than 2 lots, buildings or dwellings units shall be 1,000 feet with a maximum 24 lots or dwelling units served by a single means of access. Any single means of access serving more than 5 lots or dwelling units shall include a turn-around with a 45-foot radius, or 55-foot radius if a center landscaped island is included, a hammerhead "T" turn or a continuous loop layout. A larger turnaround may be required for commercial and industrial

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private roads. These standards may be modified by the Planning Commission in particular cases, with input from the Fire Department and Village staff or consultants.

4. Grade: Grades shall not exceed 10%, with a maximum grade of 2% for a minimum distance of 30 feet from its intersection with a public right-of-way or another private road.

5. Intersection design standards: Private roads which intersect with existing or proposed private roads or public street rights-of-way should intersect at a 90-degree angle. Where constrained by environmental features, the Planning Commission may allow a reduced angle of intersection but in no case shall the angle be less than 70 degrees.

6. Intersection offsets from public streets: Proposed private roads or entrances to a development shall align directly across from, or be offset at least 250 feet from, public streets or private road intersections on the opposite side of the street, measured centerline to centerline. This standard may be reduced if approved by the Road Commission of Benzie County.

7. Minimum offsets along private roads: Private roads and driveways (excluding driveways serving one or two dwelling units) within a development shall align directly across from other private roads or driveways or be offset at least 150 feet measured centerline to centerline.

8. Vertical Clearance: In order to provide adequate access for emergency vehicles, 15 feet of overhead tree clearance shall be provided within the width of the pavement.

9. Street names: shall be required as approved by Benzie County and then the Planning Commission to assist public emergency services.

10. Signs: All signs within the private road or access easement shall be identified on the site plan and be in accordance with the Michigan Manual of Uniform Traffic Control Devices, unless the Planning Commission approves another type of design for consistency with the character of the development. Street signs shall be provided at all intersections. These signs shall contrast in terms of color with public street signs and shall clearly indicate the road is private.

G. Existing Nonconforming Private Roads and Access Easements. The Village recognizes there exist private roads, service roads and access easements which were lawful prior to the adoption of this section and which are inconsistent with the standards herein. Such roads are declared by this section to be legal nonconforming roads or easements. The intent of this section is to permit legal nonconforming roads and easements to continue and undergo routine maintenance for safety purposes, as determined by the Zoning Administrator. This section is also intended to allow new construction to occur on existing lots which front along such a road on the adoption date of this section if the roads are reasonably capable of providing sufficient access for the uses permitted in the zoning district and for provision of emergency service vehicles. This section is also intended to discourage the extension of nonconforming roads or

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increase the number of lots or building sites served by such a road, except in platted subdivisions, divisions of land or site condominium projects existing on the adoption date of this section, unless provisions are made to upgrade such road to comply with the standards herein. Any reconstruction, widening or extension of a non-conforming private road or access easement shall be in conformity with this section.

H. Existing Lot. For purposes of determining whether a lot along a private road or access easement qualifies as an "existing lot" as used in this section, at least one of the following conditions must have existed at the time this section was adopted:

1. The lot consists of a "condominium unit" for which a master deed had been recorded with the Benzie County Register of Deeds in accordance with the requirements of the Michigan Condominium Act and other applicable laws and ordinances.

2. The lot consists of a parcel that was described by metes and bounds as recorded by a deed or as a land contract and registered with the Benzie County Register of Deeds.

3. The lot had been assigned a unique parcel number by the Benzie County Register of Deeds and was individually assessed and taxed on that basis.

2.19 PUBLIC USES: CRITICAL, ESSENTIAL, & SUPPORTING

A. Critical, essential, and supporting public uses and facilities, as defined by this Ordinance, shall be allowed in any zoning district by right. All applicable ordinances or laws shall apply.

B. All structures associated with a public use shall be subject to applicable setbacks for the district in which they are located. Public buildings and their local supporting service uses shall be permitted provided the arrangement of property uses shall minimize the impact on scenic views, and if feasible, the site design shall mitigate negative impacts related to building size, noise, lighting, and traffic. Planning Commission site plan approval and a zoning permit shall be required.

C. The erection, construction, alteration, maintenance, and operation by utility agencies or municipal departments or commission, shall be permitted as authorized or regulated by any laws and the ordinances of the Village.

D. Telecommunication towers, alternative tower structures, antennas, wind turbine generators, and anemometer towers shall be regulated and permitted by this Ordinance and shall not be regulated or permitted as essential services, public utilities, or private utilities.

2.20 RECREATIONAL VEHICLES AND TRAILERS

The storage or temporary parking of recreational vehicles is allowed provided that such storage or parking of such vehicles meets the following requirements.

A. Such parking or storage shall be strictly for the personal, noncommercial use of vehicles owned by the property owner, tenant or guest.

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B. Outdoor storage shall be limited to one (1) such vehicle per lot owned by the property owner or tenant and one (1) additional vehicle may be allowed if owned by a guest as specified below. At no time shall there be more than two (2) such vehicles per lot.

C. Recreational vehicles shall be parked or stored in the side or rear yard only.

D. One (1) operable and licensed recreational vehicle may be used for guest quarters with the following conditions:

    1. May be used for up to 90 continuous days per year with issuance of a Recreational Vehicle Guest Use permit.

    2. Must be taken to a licensed dumping facility.

    3. Must be a minimum of ten (10) feet from the side and rear property lines.

    4. No recreational vehicle may be located so as to create a nuisance to neighboring properties.

E. No recreational vehicle shall be kept, parked or stored in any district, unless the vehicle is in operating condition and properly licensed or is kept inside a building, except that any motor vehicle ordinarily used but temporarily out of running condition may be stored outdoors for not more than thirty (30) continuous days within a ninety (90) day period.

2.21 REFUSE RECEPTACLES

Refuse receptacles, including dumpsters, waste compactors, recycling bins, and composting bins used for any purpose other than residential, shall be designed, constructed and maintained according to the standards of this section. Refuse receptacle location and details of construction shall be shown on site plans. A change in receptacle location or size shall require modification to the enclosure, as warranted by this section.

A. Location: Refuse receptacles shall be located only in the rear yard or side yard and shall not be located within any rear yard setback or side yard setback, unless otherwise approved by the Planning Commission.

B. In no case be less than 20 feet from any residential district and in such a way that they are not easily damaged by the refuse removal vehicle.

C. The location and orientation of refuse receptacles and enclosures shall minimize the potential for the refuse receptacle to be viewed from public street or adjacent residential districts.

D. Access: Refuse receptacles shall be easily accessed by refuse vehicles without potential to damage to buildings or automobiles parked in designated parking spaces.

E. Enclosure: Refuse receptacles shall meet the following standards:

    1. Each refuse receptacle shall have an enclosing lid or cover.

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2. Refuse receptacles shall be enclosed on 3 sides with a gate on the fourth side. The gate must be maintained in operable and sanitary condition.

F. These provisions regarding solid waste enclosure do not apply:

1. If a structure, with a valid building permit and zoning permit, is being built on the site.

2. If a building is being torn down, with a valid zoning permit.

3. If a dumpster remains on a property no longer than 7 days per year.

2.22 SATELLITE DISH AND ANTENNA

A satellite dish or antenna shall meet the side and rear yard setback requirements of the district in which it is located.

2.23 TEMPORARY USES AND STRUCTURES

Temporary buildings and structures, which shall include Recreational Vehicles and semi- trucks/trailers, shall comply with the following requirements:

A. Temporary Structures Used for Residential Purposes. A building, structure or Recreational Vehicle may be approved for temporary residential use only while a principal dwelling is under construction or being repaired. Any such temporary building or structure shall not be used as a temporary residence without prior review and approval by the Zoning Administrator. Temporary structures for residential use are subject to the following:

1. Such permits may be issued by the Zoning Administrator for up to 6 months in duration and may be renewed for a period of up to 6 months, provided that work is proceeding in an expeditious manner.

2. The total duration of a temporary permit shall not exceed 12 months.

3. Temporary structures shall comply with the setback standards for the district in which they are located.

4. Temporary structures shall have proper agency approvals for electrical and utility connections.

5. Must be connected to sanitary sewer facilities or taken to a licensed dumping facility.

6. An approved temporary structure may be moved onto a site 14 days prior to commencement of construction and shall be removed within 14 days following issuance of a Certificate of Occupancy by the County for the permanent dwelling.

B. Temporary Structures Used for Nonresidential Purposes. Temporary buildings for nonresidential use shall be permitted only when the intended use is by a contractor or builder in conjunction with a

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construction project, and only after review and approval by the Zoning Administrator. Such temporary structures shall be removed immediately upon completion of the construction project.

C. Permits. Permits for the utilization of temporary structures shall be issued by the Zoning Administrator. The permit shall specify a date for the removal of the temporary structure, and the Zoning Administrator may require posting of a bond to ensure removal of the structure. Approval by the Benzie County Building Department is required for such structures prior to use.

D. Use as an Accessory Structure. A temporary building or structure shall not be used as an accessory building or structure, except as permitted herein.

E. Special Events and Other Temporary Uses. The Zoning Administrator may grant temporary use of land and structures for special events and other temporary uses subject to the following general conditions:

1. Adequate off-street parking shall be provided.

2. The applicant shall specify the exact duration of the temporary use.

3. Electrical and utility connections shall be approved by the appropriate agency.

2.24 WATER SUPPLY AND SEWAGE DISPOSAL FACILITIES.

All water supply and sanitary sewage disposal systems either public or private, for any building hereafter erected, altered or moved upon any premises shall be subject to compliance with Benzie County Environmental Health Department sanitary code requirements or, if applicable, the Michigan Department of Environmental Quality. Plans must be submitted to and approved by the responsible agencies. The written approval, or written assurances of such approvals, of such facilities by the Benzie County Environmental Health Department or the Michigan Department of Environmental Quality shall be filed with the application for a Land Use Permit.

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ARTICLE 3: ZONING DISTRICTS & MAP

3.1 ZONING MAP

The boundaries of the zoning districts established by this Ordinance are shown on a map or series of maps designated as the "Official Zoning Map". The Official Zoning Map including all notations, references, data and other information shown therein, is adopted and made a part of this Ordinance as fully as if it were contained within the pages of this Ordinance.

3.1.1 Location

The Official Zoning Map is filed in the office of the Village Clerk. A copy is contained within this Ordinance and on the Village of Elberta website.

3.1.2 Updates

The Village Council may adopt amendments to the district boundaries designated on the Official Zoning Map upon review and recommendation by the Village of Elberta Planning Commission.

3.1.3 Zoning Districts Established

To carry out the purpose of this Ordinance, The Village of Elberta shall be divided into the following districts:

C - Conservation District
NR - Neighborhood Residential District
FR - Flexible Residential District
NC - Neighborhood Commercial District
D - Downtown Commercial District
W - Waterfront District
DW - Deep Water Port District

3.1.4 Overlay Districts Established

In addition to the above established zoning districts, the following overlay districts are established:

Sensitive Areas Overlay District

3.1.5 Zoning District Boundaries

Where uncertainty exists with respect to the boundaries of the various districts, the following rules shall apply:

A. The district boundaries are road rights-of-way and road easements including public and private roads, streets or alleys unless otherwise shown; where the districts designated on the Official Zoning

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Map are approximately bound by a road, street, or alley, the same shall be construed to be the boundary of the district.

B. Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines; where districts designated on the Official Zoning Map are approximately bounded by lot lines, the same shall be construed to be the boundary of the districts, unless otherwise indicated on the Official Zoning Map.

C. Whenever any road, street, alley, or other public way is officially vacated by the Village or Benzie County Road Commission, the district adjoining each side thereof shall be automatically extended to the center of such vacation and all area included in the vacation shall thereafter be subject to all appropriate regulations of the extended districts.

D. Where physical or natural features existing on the ground or shoreline are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by rules “A” through “C” above, the Zoning Administrator shall provide an opinion of the boundaries.

E. Any dispute in the opinion of the zoning district boundaries from the Zoning Administrator shall be heard by the Zoning Board of Appeals (ZBA) for final determination.

3.1.6 Official Zoning Map

For the purpose of this Ordinance, the zoning districts as provided herein are bound and defined as shown on a map entitled "Official Zoning Map of the Village of Elberta, Benzie County, Michigan." The official zoning map, with all explanatory matter thereon, is made a part of this Ordinance. Any amendments to the Official Zoning Map shall be incorporated into the Official Zoning Map and shall state the adoption date of the amendment.

3.1.7 Authority of Official Zoning Map

Regardless of the existence of purported copies of the official zoning map which may from time to time be made or published, the official zoning map, which shall be located in the office of the Clerk and open to public inspection, shall be the final authority as to the current zoning status of any land, parcel, lot, district, use, building or structure in the Village.

3.1.8 Annexation

Any land that is annexed to the Village shall be classified Neighborhood Residential District immediately upon annexation to the Village and shall remain as such until the land is officially rezoned. If the Neighborhood Residential zoning is inconsistent with the zoning and use of surrounding properties, the Village shall initiate the rezoning of the property within 6 months of the date of the annexation.

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3.2 ZONING DISTRICT REGULATIONS

3.2.1 Overview

The following sections of this Article regulate the uses, dimensional standards, principal building form, accessory buildings, landscaping, screening, and off-street parking design for each zoning district. Additional standards related to these items exist throughout the Ordinance and are in effect as applicable.

3.2.2 Scope of Regulations

Except as provided, no structure shall be erected or altered, nor shall any building or premises be used for any purpose other than as permitted in the district in which such building or premises is located.

3.2.3 Interpreting District Regulations:

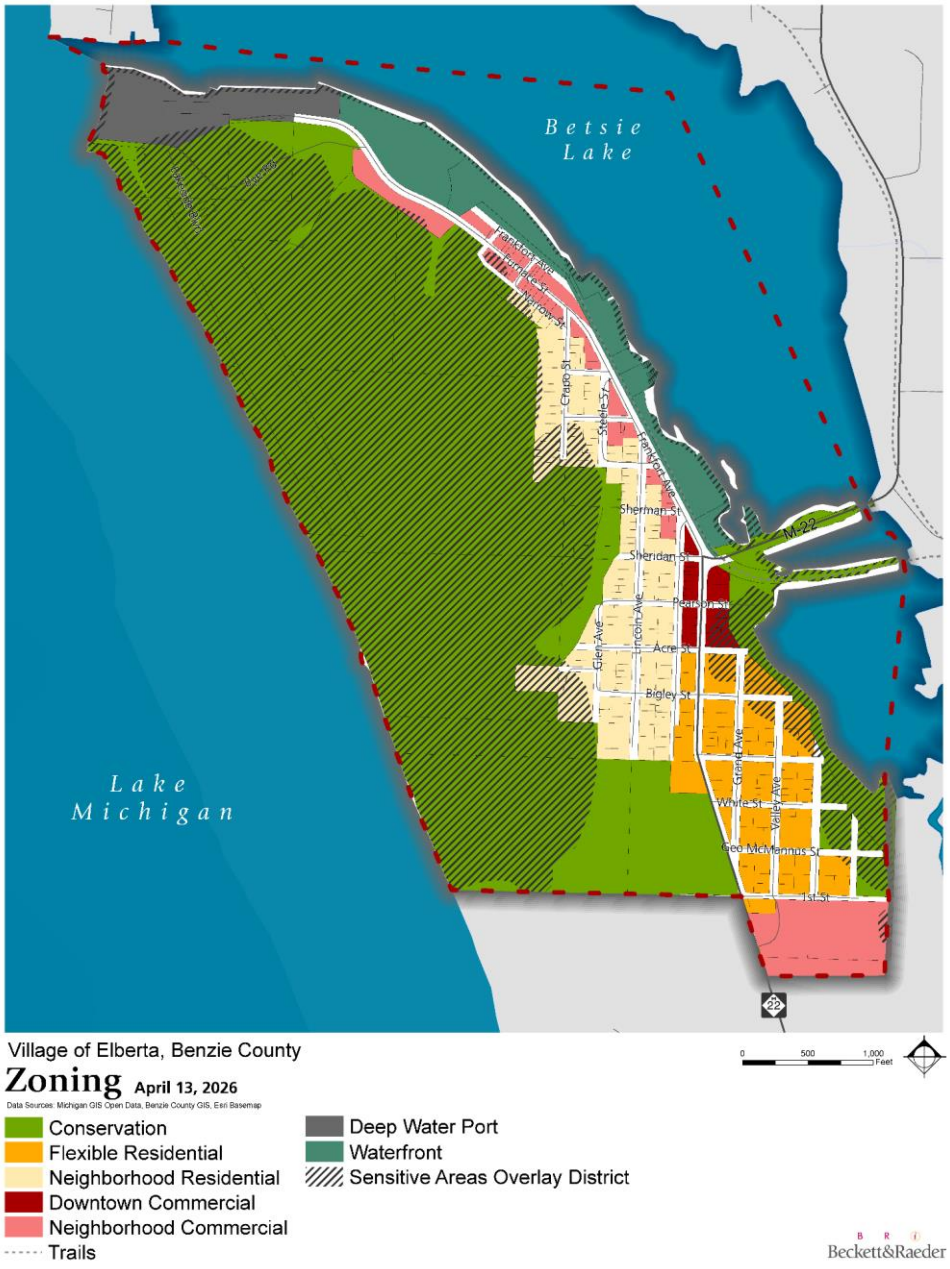
A. Regulated uses listed as "By Right" approval type shall require site plan review, where applicable. Regulated uses listed as "Special Use" approval type shall require a special land use permit.

B. Regulated uses that have additional supplemental use standards are indicated with the Section number where the supplemental use standards can be found.

C. Additional standards applicable to the items regulated for each zoning district, including but not limited to landscaping, fencing, off-street parking, and loading zones exist within this Ordinance. Nothing in this Article shall exempt a land use or development from satisfying any additional, applicable standards or design requirements contained within this Ordinance.

D. In addition to the standards in this subsection and those under this Section, all properties within an Overlay District shall be subject to the requirements of the overlay district as presented in Article 4. Where there is a conflict between the standards of this Article and those of the overlay district, those of the overlay district shall supersede the regulations of this Article.

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Betsie Lake
Lake Michigan
Crapo St
Steele St
Frankfort Ave
Sherman St
Sheridan St
Pearl St
Lincoln Ave
Glen Ave
Acre St
Bigley St
Grand Ave
White St
Valley Ave
Geo McManus St
1st St
M-22
22
Village of Elberta, Benzie County
Zoning April 13, 2026
Data Sources: Michigan GIS Open Data, Benzie County GIS, Esri Basemap
0 500 1,000 Feet
Conservation
Flexible Residential
Neighborhood Residential
Downtown Commercial
Neighborhood Commercial
Trails
Deep Water Port
Waterfront
Sensitive Areas Overlay District
Beckett&Raeder

CONSERVATION DISTRICT



3.3 C: CONSERVATION ZONING DISTRICT

3.3.1 Intent & Purpose

This district is intended to preserve important natural features and protect sensitive environmental resources. Limited development is permitted and may be subject to state and federal regulations. Low impact design should be prioritized for uses and structures in this district. Development that maximizes the environmental protection of the coastal environment and provides the opportunity for public access to the water's edge is preferred. Mixed use Planned Unit Developments that recognize the unique features of the Elberta Coastal environment may be considered. This may allow the property owner to propose a unified development plan for a single property, or group of properties under a single ownership, which combines commercial recreational uses with limited supporting residential uses, allowing a development plan which maximizes the environmental protection of the coastal environment.

3.3.2 Table of Regulated Uses

C: REGULATED USES	APPROVAL TYPE	SUPPLEMENTAL STANDARDS	MINIMUM PARKING
Accessory Structures and Buildings	By Right	2.15	
Accessory Uses	By Right		
Commercial Recreation	Special Use		
Planned Unit Development (PUD)	Special Use	9.1	
Public Parks	By Right		
Public Recreation Areas	By Right		
Public Use - Critical	By Right		
Public Use - Essential	By Right		
Public Use - Supporting	By Right		
NOTES: Additional parking standards located in Article 5.			

3.3.3 Dimensional Standards

C: DIMENSIONAL STANDARDS	
Lot Occupation	
Minimum Lot Width	330 feet
Minimum Lot Area	5 acres
Maximum Impervious Coverage	33%
Principal Structure	
Front Setback	25 feet
Side Setback	10 feet
Rear Setback	10 feet
Maximum Height	30 feet
Accessory Structures	
Permitted Locations	Side and Rear Yards
Separation	10 feet between structures

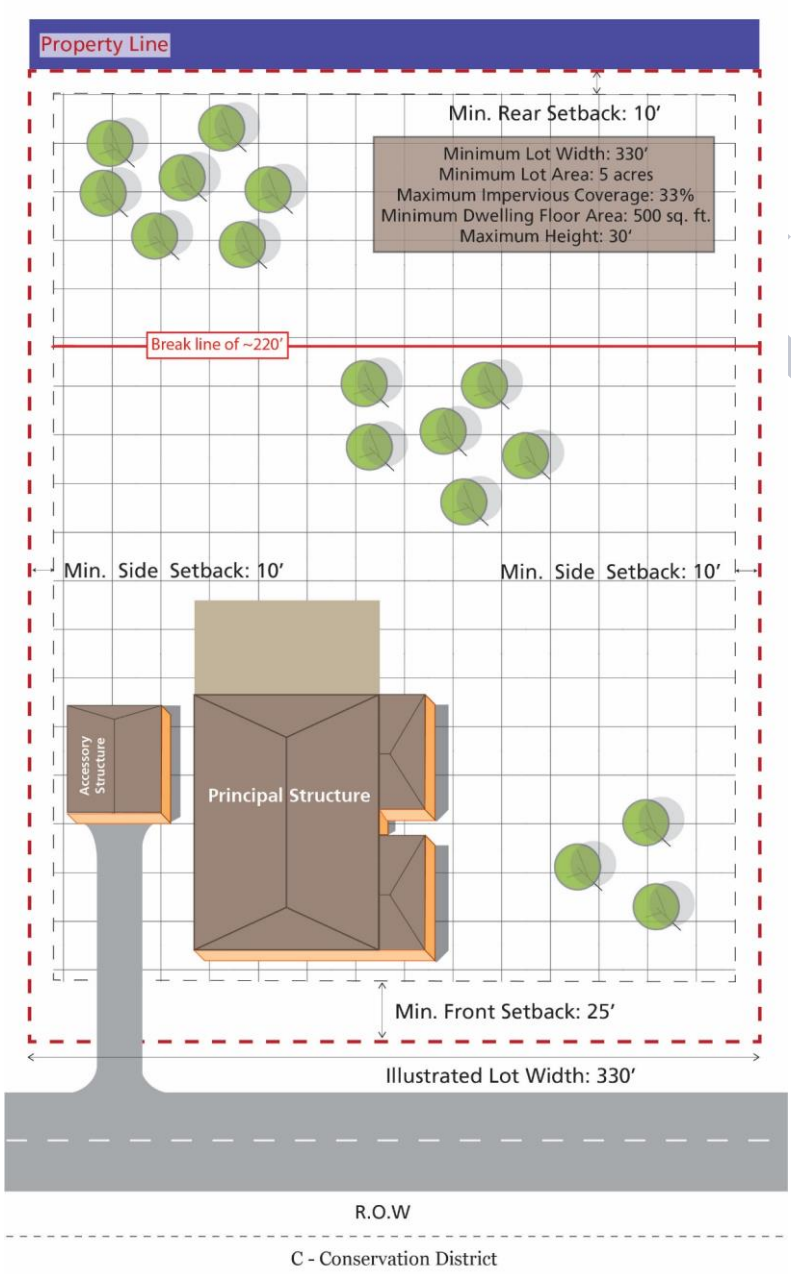
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C: DIMENSIONAL STANDARDS	
Setbacks	Same as Principal
Maximum Height	14 feet*
NOTES: Additional accessory building standards located in Article 2.	

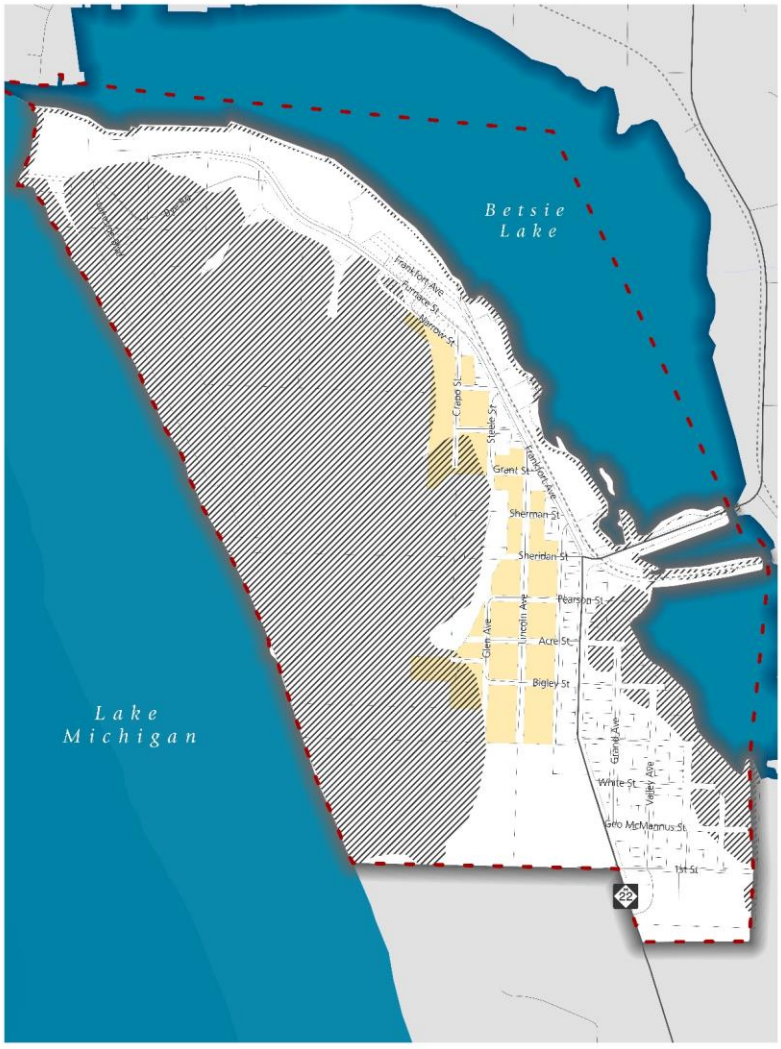
3.3.4 Fencing

C: FENCING STANDARDS		
Item	Maximum Height	Location
Front Yard Fences	4 feet	Entirely on the property it serves
Rear & Side Yard Fences	6 feet	Entirely on the property it serves
NOTES: Additional fencing standards located in Article 2.		

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Property Line
Min. Rear Setback: 10'
Minimum Lot Width: 330'
Minimum Lot Area: 5 acres
Maximum Impervious Coverage: 33%
Minimum Dwelling Floor Area: 500 sq. ft.
Maximum Height: 30'
Break line of ~220'
Min. Side Setback: 10'
Min. Side Setback: 10'
Accessory Structure
Principal Structure
Min. Front Setback: 25'
Illustrated Lot Width: 330'
R.O.W
C - Conservation District

NEIGHBORHOOD RESIDENTIAL DISTRICT



3.4 NR: NEIGHBORHOOD RESIDENTIAL ZONING DISTRICT

3.4.1 Intent & Purpose

This district is intended for single-family and two-family residential uses, together with schools, religious institutions, parks, and playgrounds. This district provides the main living area for the Village; therefore, it is important that developments provide social interaction components such as sidewalks and parks. Buildings in this district are strongly encouraged to be designed to be compatible with the architectural character of existing buildings with respect to their: garage location, building height, materials of construction, roof pitch, porches, windows, and pedestrian and vehicular access locations. New development shall be constructed using design treatments that are compatible with the existing character of established residential buildings.

3.4.2 Table of Regulated Uses

NR: REGULATED USES	APPROVAL TYPE	SUPPLEMENTAL STANDARDS	MINIMUM PARKING
1 & 2 Family Dwellings	By Right	6.10	1/unit
Accessory Dwelling Units	By Right	6.2	
Accessory Structures and Buildings	By Right	2.15	
Accessory Uses	By Right		
Boarding House	Special Use		
Bungalow/Cottage Courts	Special Use	6.7	
Child Care Family Homes	By Right		
Child Care Group Homes	By Right		
Co-Housing	Special Use		
Commercial Recreation	Special Use		
Congregate Housing	Special Use		
Home Occupation	By Right	6.15	
Junior Accessory Dwelling Units	By Right		
Manufactured Housing Communities	Special Use	9.3	
Planned Unit Developments (PUD)	Special Use	9.1	
Public Parks	By Right		
Public Recreation Areas	By Right		
Public Use - Critical	By Right		
Public Use - Essential	By Right		
Public Use - Supporting	By Right		
Religious Institutions	Special Use		
State Licensed Residential Facilities	By Right		
NOTES: Additional parking standards located in Article 5.			

3.4.3 Dimensional Standards

NR: DIMENSIONAL STANDARDS	
Lot Occupation	
Minimum Lot Width	35 feet
Minimum Lot Area	3,500 sq ft

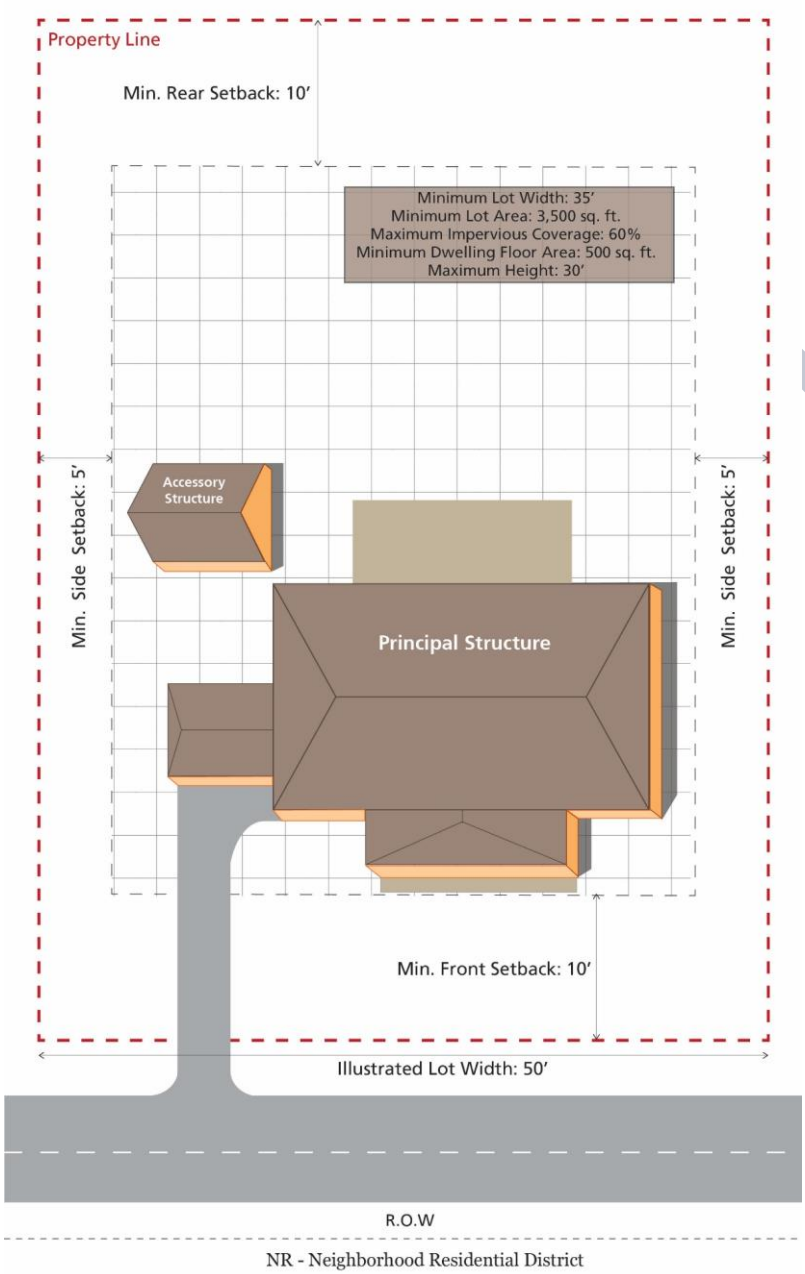
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NR: DIMENSIONAL STANDARDS	
Maximum Impervious Coverage	50%
Principal Structure	
Front Setback	10
Side Setback	5 feet
Rear Setback	10 feet
Maximum Height	30 feet
Minimum Dwelling Size	500 sq ft
Accessory Structures	
Permitted Locations	Side and Rear Yards
Separation	10 feet between structures
Setbacks	Front and side same as Principal. Rear reduced to 5 feet except ADU's
Maximum Height	14 feet*, except ADU's may be 30 feet
NOTES: Additional accessory building standards located in Article 2.	

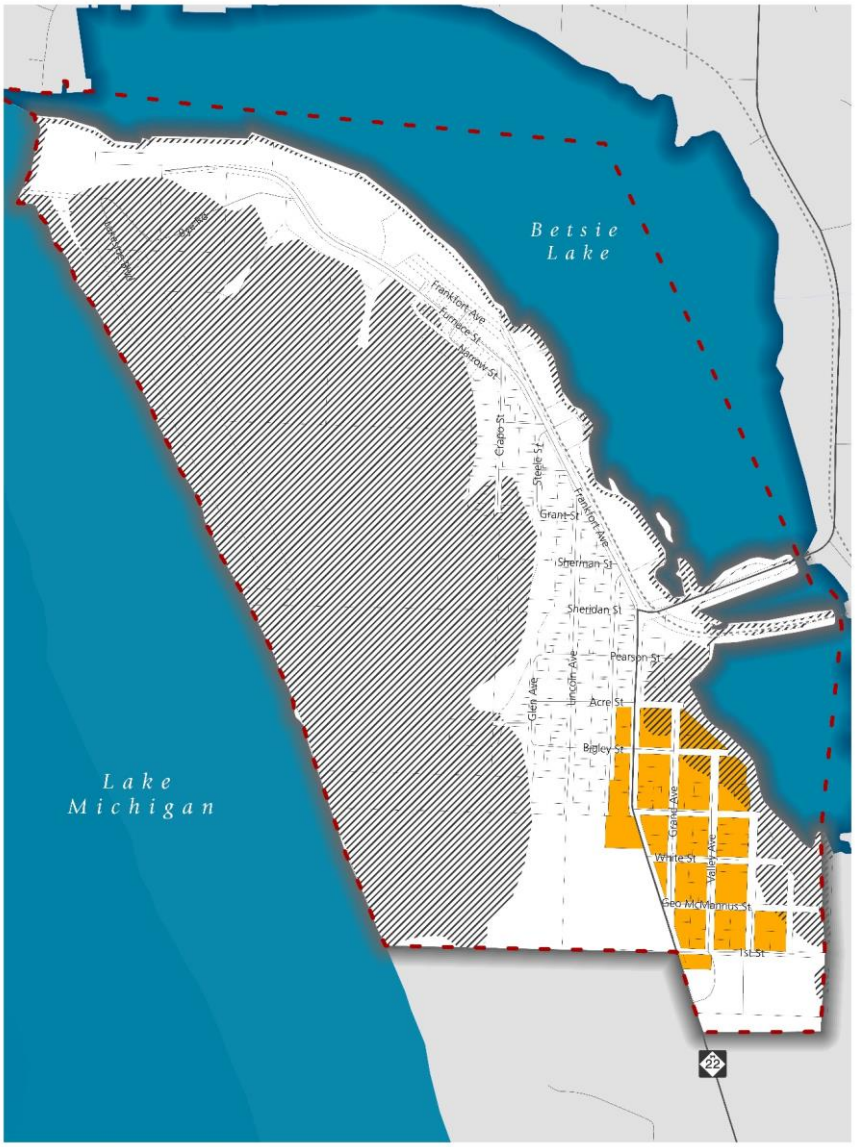
3.4.4 Fencing

NR: FENCING STANDARDS		
Item	Maximum Height	Location
Front Yard Fences	4 feet	Entirely on the property it serves
Rear & Side Yard Fences	6 feet	Entirely on the property it serves
NOTES: Additional fencing standards located in Article 2.		

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Property Line
Min. Rear Setback: 10'
Minimum Lot Width: 35'
Minimum Lot Area: 3,500 sq. ft.
Maximum Impervious Coverage: 60%
Minimum Dwelling Floor Area: 500 sq. ft.
Maximum Height: 30'
Min. Side Setback: 5'
Min. Side Setback: 5'
Accessory Structure
Principal Structure
Min. Front Setback: 10'
Illustrated Lot Width: 50'
R.O.W
NR - Neighborhood Residential District

FLEXIBLE RESIDENTIAL DISTRICT



3.5 FR: FLEXIBLE RESIDENTIAL ZONING DISTRICT

3.5.1 Intent & Purpose

This district is intended to provide a district that permits a greater variety of housing options that take advantage of different lot sizes and a need for attainable price points. Compared with the Neighborhood Residential zoning district, areas covered by the Flexible Residential zoning district have a wider range of lot sizes that can accommodate more housing diversity contingent upon regulations such as height, setbacks, parking, and design.

3.5.2 Table of Regulated Uses

FR: REGULATED USES	APPROVAL TYPE	SUPPLEMENTAL STANDARDS	MINIMUM PARKING
1 to 5+ Family Dwellings	By Right	6.10	1/unit
Accessory Dwelling Units	By Right	6.2	
Accessory Structures and Buildings	By Right	2.15	
Accessory Uses	By Right		
Assisted Living Facilities	By Right		
Bed and Breakfast Establishments	Special Use		
Boarding House	Special Use		
Bungalow/Cottage Courts	Special Use	6.7	
Child Care Family Homes	By Right		
Child Care Group Homes	By Right		
Co-Housing	Special Use		
Commercial Recreation	Special Use		
Congregate Housing	Special Use		
Cottage Court	Special Use	6.7	
Home Occupation	By Right	6.15	
Junior Accessory Dwelling Units	By Right		
Manufactured Housing Communities	Special Use	9.3	
Planned Unit Developments (PUD)	Special Use	9.1	
Public Parks	By Right		
Public Recreation Areas	By Right		
Public Use - Critical	By Right		
Public Use - Essential	By Right		
Public Use - Supporting	By Right		
Religious Institutions	Special Use		
State Licensed Residential Facilities	By Right		
NOTES: Additional parking standards located in Article 5.			

3.5.3 Dimensional Standards

FR: DIMENSIONAL STANDARDS	
Lot Occupation	
Minimum Lot Width	45 feet

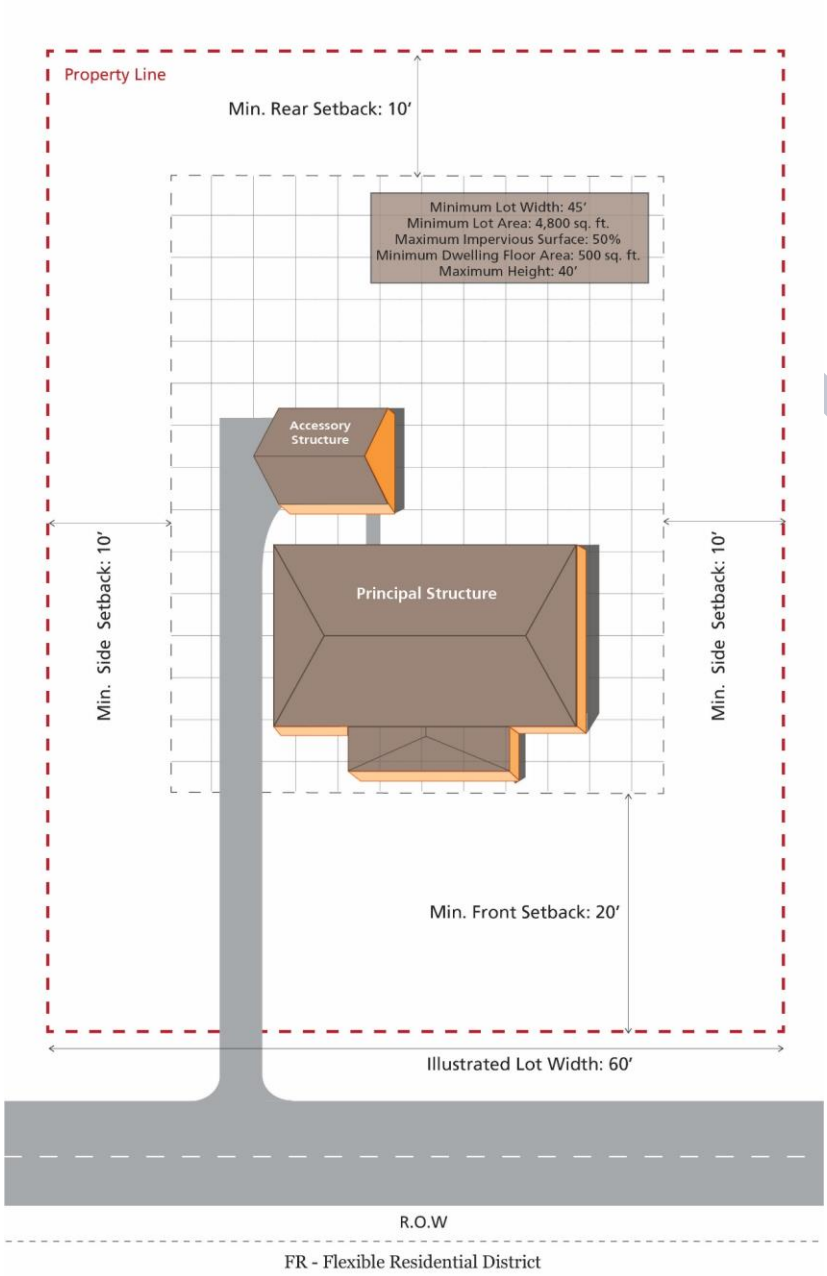
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FR: DIMENSIONAL STANDARDS	
Minimum Lot Area	4,800 sq ft
Maximum Impervious Coverage	50%
Principal Structure	
Front Setback	20 feet
Side Setback	10 feet
Rear Setback	10 feet
Maximum Height	40 feet
Minimum Dwelling Size	500 sq ft* Except Junior ADU may be 250 sq ft
Accessory Structures	
Permitted Locations	Side and Rear Yards
Separation	10 feet between structures
Setbacks	Front and side same as Principal Rear reduced to 5 feet except ADU's
Maximum Height	14 feet*, except ADU's may be 30 feet
NOTES: Additional accessory building standards located in Article 2.	

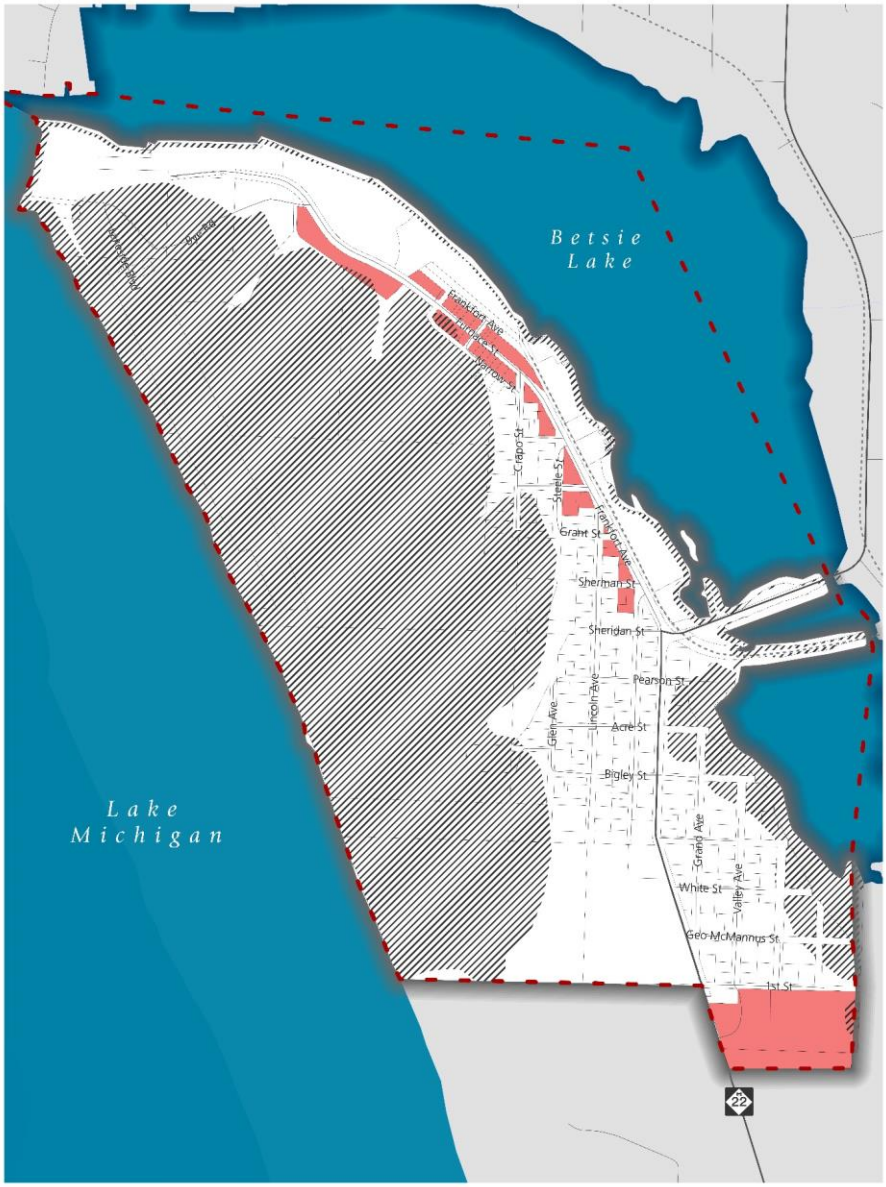
3.5.4 Fencing

FR: FENCING STANDARDS		
Item	Maximum Height	Location
Front Yard Fences	4 feet	Entirely on the property it serves
Rear & Side Yard Fences	6 feet	Entirely on the property it serves
NOTES: Additional fencing standards located in Article 2.		

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Property Line
Min. Rear Setback: 10'
Minimum Lot Width: 45'
Minimum Lot Area: 4,800 sq. ft.
Maximum Impervious Surface: 50%
Minimum Dwelling Floor Area: 500 sq. ft.
Maximum Height: 40'
Accessory Structure
Principal Structure
Min. Side Setback: 10'
Min. Side Setback: 10'
Min. Front Setback: 20'
Illustrated Lot Width: 60'
R.O.W
FR - Flexible Residential District

NEIGHBORHOOD COMMERCIAL DISTRICT



3.6 NC: NEIGHBORHOOD COMMERCIAL ZONING DISTRICT

3.6.1 Intent & Purpose

The intent of the Neighborhood Commercial district is to create a district that supports both the Downtown Commercial and Waterfront districts while providing a transitional zone to residential districts. The Neighborhood Commercial District provides a corridor that connects the Downtown Commercial District to the Waterfront districts. This district should include buildings that are smaller in scale than the Downtown Commercial District with mixed uses that have lower impacts and are appropriate to be adjacent to residential uses. This district has larger open space requirements that allow for outdoor seating areas, food trucks, car and bicycle parking, and other communal areas. This district allows access to commercial uses for people traveling by car, by bike along the Betsie Valley Trail, and for pedestrians walking from the nearby neighborhoods.

3.6.2 Table of Regulated Uses

NC: REGULATED USES	APPROVAL TYPE	SUPPLEMENTAL STANDARDS	MINIMUM PARKING
1 to 5+ Family Dwellings	By Right	6.10	1/unit
Accessory Structures and Buildings	By Right	2.15	
Accessory Uses	By Right		
Agricultural Labor Housing	By Right		
Animal Grooming	By Right		
Assembly Facilities	Special Use		
Assisted Living Facilities	By Right		
Bed and Breakfast Establishments	By Right		
Boarding House	By Right		
Business/Financial Services - Banks	By Right		
Campground	Special Use	6.8	
Child Care Centers	By Right		
Commercial Recreation	Special Use		
Co-Housing	By Right		
Congregate House	By Right		
Cultural Facilities	Special Use		
Dwelling Units Above 1st Floor Commercial	By Right		1/unit
Educational Facilities	Special Use		
Food Trucks	By Right		
Funeral Homes	Special Use		
Gasoline Service Stations	Special Use	6.12	
Healthcare Services	Special Use		
Home Occupation	By Right	6.15	
Hotels/Motels	Special Use	6.14	1/unit + 1/employee
Junior Accessory Dwelling Units	By Right		1/unit
Kennels	Special Use	6.16	
Live Above/Work Units	By Right		

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NC: REGULATED USES	APPROVAL TYPE	SUPPLEMENTAL STANDARDS	MINIMUM PARKING
Office Buildings	By Right		
Outdoor Seating	By Right		
Personal Services	By Right		
Planned Unit Developments (PUD)	Special Use		
Professional Services	By Right		
Public Parks	By Right		
Public Recreation Areas	By Right		
Public Use - Critical	By Right		
Public Use - Essential	By Right		
Public Use - Supporting	By Right		
Religious Institutions	Special Use		
Restaurants	Special Use		
Retail Greater Than 5,000 Sq Ft	Special Use		
Retail Less Than 5,000 Sq Ft	By Right		
Short Term Rentals	Special Use	6.18	
Tasting Rooms	Special Use		
Towers	Special Use	6.19 (Need scaled options)	
Veterinary Hospitals	Special Use		
NOTES: Additional parking standards located in Article 5.			

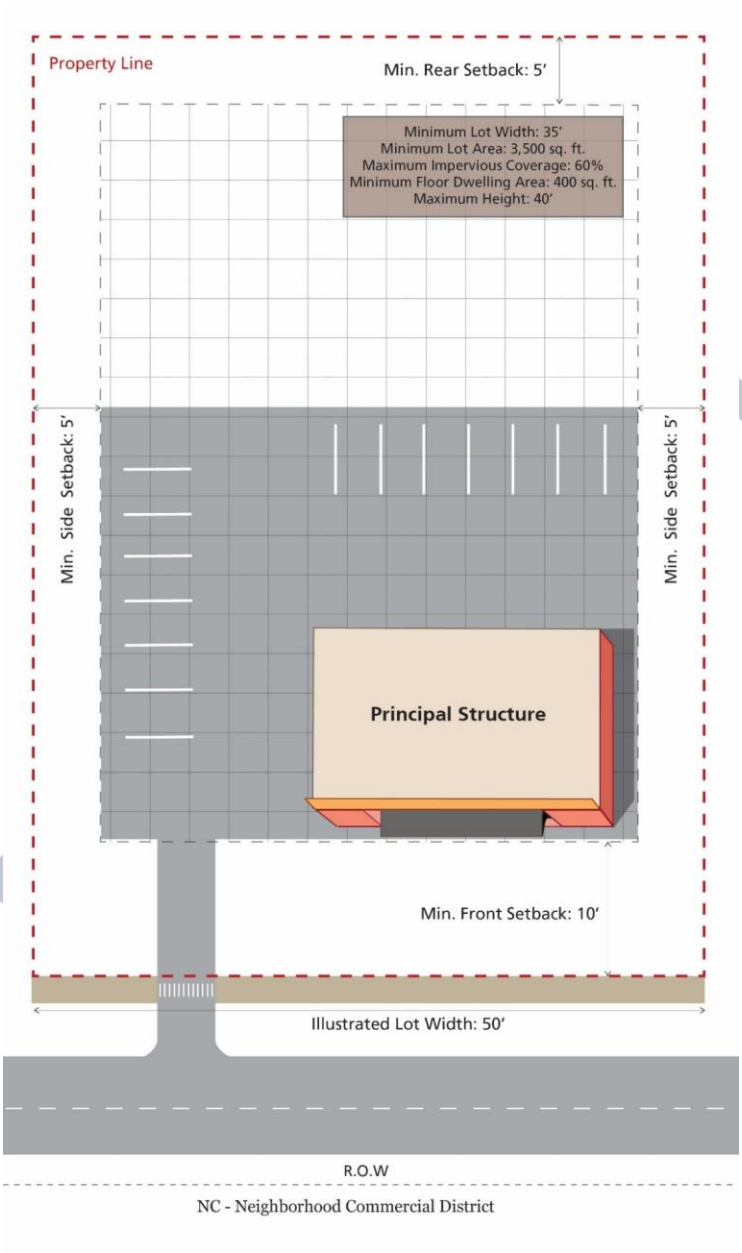
3.6.3 Dimensional Standards

NC: DIMENSIONAL STANDARDS	
Lot Occupation	
Minimum Lot Width	35 feet
Minimum Lot Area	3,500 sq ft
Maximum Impervious Coverage	60%
Principal Structure	
Front Setback	10 feet
Side Setback	5 feet
Rear Setback	5 feet
Maximum Height	40 feet
Minimum Dwelling Size	400 sq ft, except Junior ADU may be 250 sq ft
Accessory Structures	
Permitted Locations	Side and Rear Yards
Separation	10 feet between structures
Setbacks	Same as Principal
Maximum Height	14 feet
NOTES: Additional accessory building standards located in Article 2.	

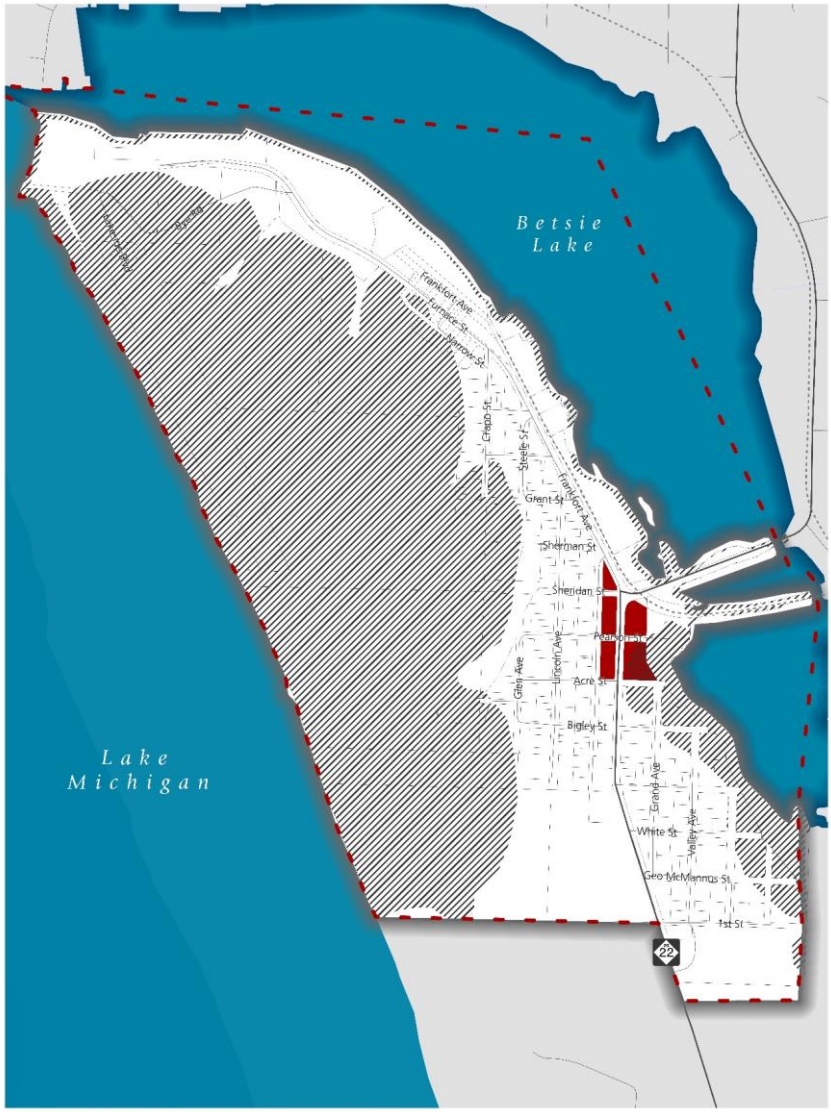
3.6.4 Fencing

NC: FENCING STANDARDS		
Item	Maximum Height	Location
Front Yard Fences	4 feet	Entirely on the property it serves
Rear & Side Yard Fences	6 feet	Entirely on the property it serves
NOTES: Additional fencing standards located in Article 2.		

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Property Line
Min. Rear Setback: 5'
Minimum Lot Width: 35'
Minimum Lot Area: 3,500 sq. ft.
Maximum Impervious Coverage: 60%
Minimum Floor Dwelling Area: 400 sq. ft.
Maximum Height: 40'
Min. Side Setback: 5'
Min. Side Setback: 5'
Principal Structure
Min. Front Setback: 10'
Illustrated Lot Width: 50'
R.O.W
NC - Neighborhood Commercial District

DOWNTOWN COMMERCIAL DISTRICT



3.7 D: DOWNTOWN COMMERCIAL ZONING DISTRICT

3.7.1 Intent & Purpose

It is the intent of this District to be the commercial epicenter of the Village with improved mobility and circulation for nonmotorized users. This District includes mixed uses with attractive facades and streetscapes to draw in patrons. This District includes enhanced landscaping standards and carefully evaluated parking standards. It is also the purpose of this district to accommodate commercial activities offering goods and services needed by Village residents. This district also accommodates resort retail and service operations as well as residential land uses and apartments under appropriate conditions. Structures in this district should be designed to be compatible with the architectural character of the existing buildings with respect to building placement and building height, materials of construction, rooflines, roof pitch, porches and windows, and pedestrian and vehicular access locations.

3.7.2 Table of Regulated Uses

D: REGULATED USES	APPROVAL TYPE	SUPPLEMENTAL STANDARDS	MINIMUM PARKING
1 to 5+ Family Dwellings Above 1st Floor Commercial	By Right	6.10	1/unit
Accessory Structures and Buildings	By Right	2.15	
Accessory Uses	By Right		
Animal Grooming	By Right		
Assembly Facilities	Special Use		
Assisted Living Facilities	By Right		
Auto Body Repair Shops	Special Use	6.5	
Automobile Service Stations	Special Use	6.4	
Automobile Wash	Special Use	6.3	
Business/Financial Services - Banks	By Right		
Campground	Special Use	6.8	
Child Care Centers	By Right		
Commercial Recreation	Special Use		
Contractor Establishments	Special Use		
Cultural Facilities	By Right		
Educational Facilities	By Right		
Food Trucks	By Right		
Funeral Homes	By Right		
Gasoline Service Stations	Special Use	6.12	
Healthcare Services	By Right		
Home Occupation	By Right	6.15	
Hotels/Motels	Special Use	6.14	1/unit + 1/ employee
Live/Work Units	By Right		
Office Buildings	By Right		
Outdoor Seating	By Right		
Personal Service	By Right		
Planned Shopping Centers	Special Use		

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D: REGULATED USES	APPROVAL TYPE	SUPPLEMENTAL STANDARDS	MINIMUM PARKING
Planned Unit Development (PUD)	Special Use	9.1	
Private Recreation Facilities	Special Use		
Professional Services	By Right		
Public Parks	By Right		
Public Recreation Areas	By Right		
Public Use - Critical	By Right		
Public Use - Essential	By Right		
Public Use - Supporting	By Right		
Religious Institutions	Special Use		
Restaurants	By Right		
Retail Greater Than 5,000 Sq Ft	Special Use		
Retail Less Than 5,000 Sq Ft	By Right		
Short Term Rentals	Special Use	6.18	
Tasting Rooms	By Right		
Towers	Special Use	6.19 (Need scaled options)	
Veterinary Hospitals	By Right		
NOTES: Additional parking standards located in Article 5.			

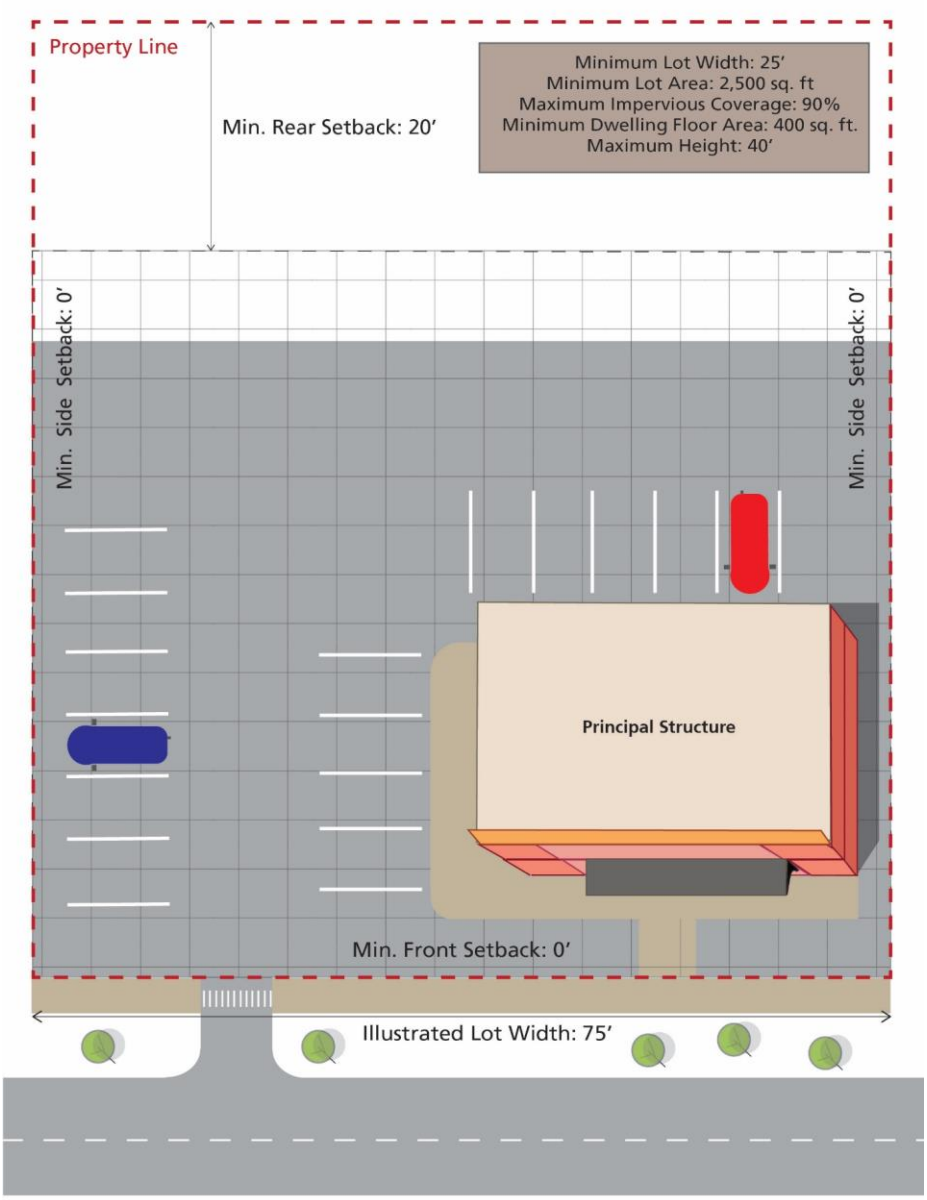
3.7.3 Dimensional Standards

D: DIMENSIONAL STANDARDS	
Lot Occupation	
Minimum Lot Width	25 feet
Minimum Lot Area	2,500 sq ft
Maximum Impervious Coverage	90%
Principal Structure	
Front Setback	0 feet
Side Setback	0 feet
Rear Setback	20 feet
Maximum Height	40 feet
Minimum Dwelling Size	400 sq ft
Accessory Structures	
Permitted Locations	Side and Rear Yards
Separation	10 feet between structures
Setbacks	Same as Principal
Maximum Height	14 feet
NOTES: Additional accessory building standards located in Article 2.	

3.7.4 Fencing

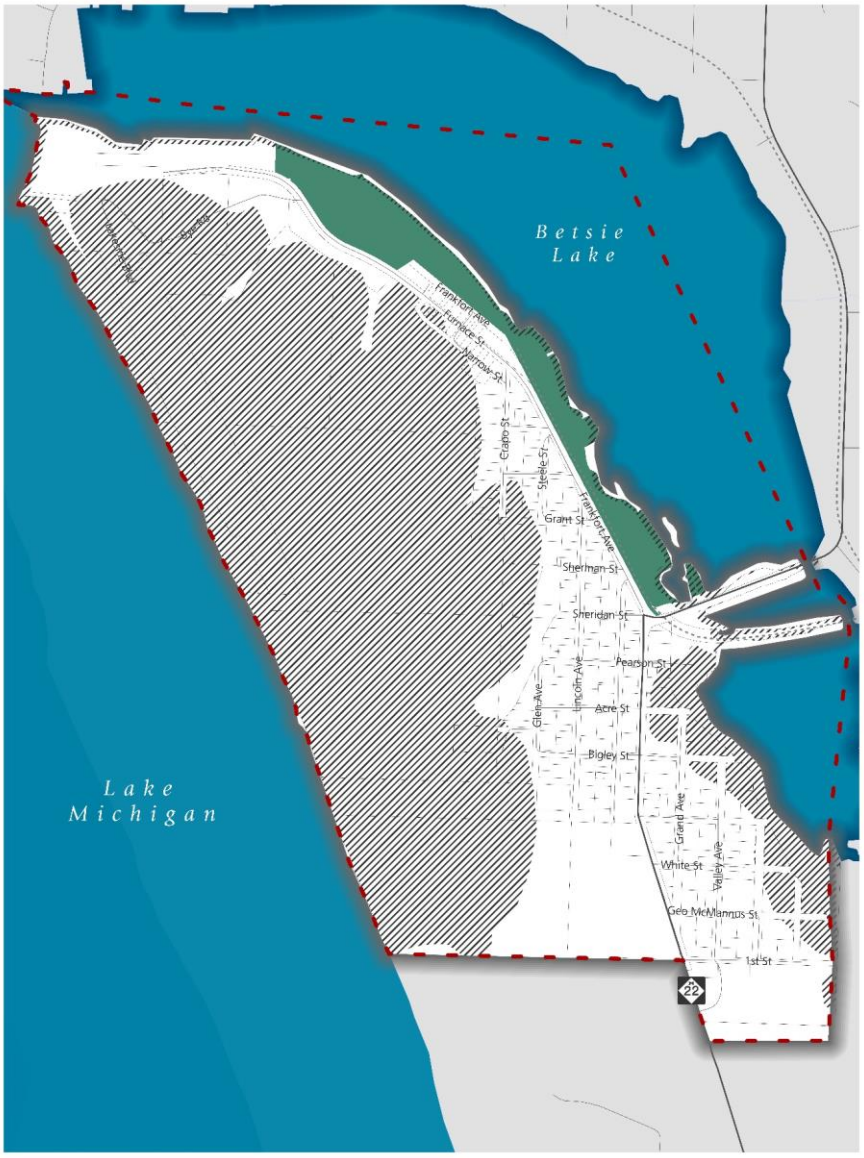
D: FENCING STANDARDS		
Item	Maximum Height	Location
Front Yard Fences	4 feet	Entirely on the property it serves
Rear & Side Yard Fences	6 feet	Entirely on the property it serves
NOTES: Additional fencing standards located in Article 2.		

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D - Downtown District

WATERFRONT DISTRICT



3.8 W: WATERFRONT ZONING DISTRICT

3.8.1 Intent & Purpose

It is the purpose of this district to provide a mix of uses that include water-related businesses and recreation that do not degrade the water or shoreline. Providing connectivity to the Downtown Commercial District for nonmotorized users and maintaining public access to Betsie Lake is a priority. This district allows a mix of residential and commercial uses through the Planned Unit Development (PUD) process. The PUD process allows flexibility in how a development is shaped upon the land in order to balance uses including a mix of water-recreation and other complementary businesses; commercial uses that do not erode the shoreline or water quality; development with an appropriate scale and look to fit into the Village's aesthetic; uses/structures that are designed and engineered to handle lake level fluctuations; limits structures on sensitive natural features; and provides trails and overlook destinations that maintain public access to the shoreline with a priority to allow the Betsie Valley Trail to meander through the development.

3.8.2 Table of Regulated Uses

W: REGULATED USES	APPROVAL TYPE	SUPPLEMENTAL STANDARDS	MINIMUM PARKING
Accessory Structures and Buildings	By Right	2.15	
Accessory Uses	By Right		
Child Care Centers	By Right		
Commercial Recreation	Special Use		
Cultural and Historical Facilities	Special Use		
Deep Draft Marine Vessels	Special Use		
Dwelling Units Above 1st Floor Commercial	Special Use	6.10 & 9.1	
Educational Facilities	Special Use		
Food Trucks	By Right		
Hotels/Motels	Special Use	6.14	1/unit + 1/employee
Marinas and Launching Ramps	Special Use	6.17	
Marine Vessel Sales	Special Use		
Marine Vessel Storage and Repair	Special Use		
Outdoor Seating	By Right		
Personal Services	By Right		
Planned Unit Developments (PUD)	Special Use	9.1	
Public Parks	By Right		
Public Recreation Areas	By Right		
Public Use - Critical	By Right		
Public Use - Essential	By Right		
Public Use - Supporting	By Right		
Restaurants	Special Use		
Retail	Special Use		
Tasting Rooms	Special Use		
NOTES: Additional parking standards located in Article 5.			

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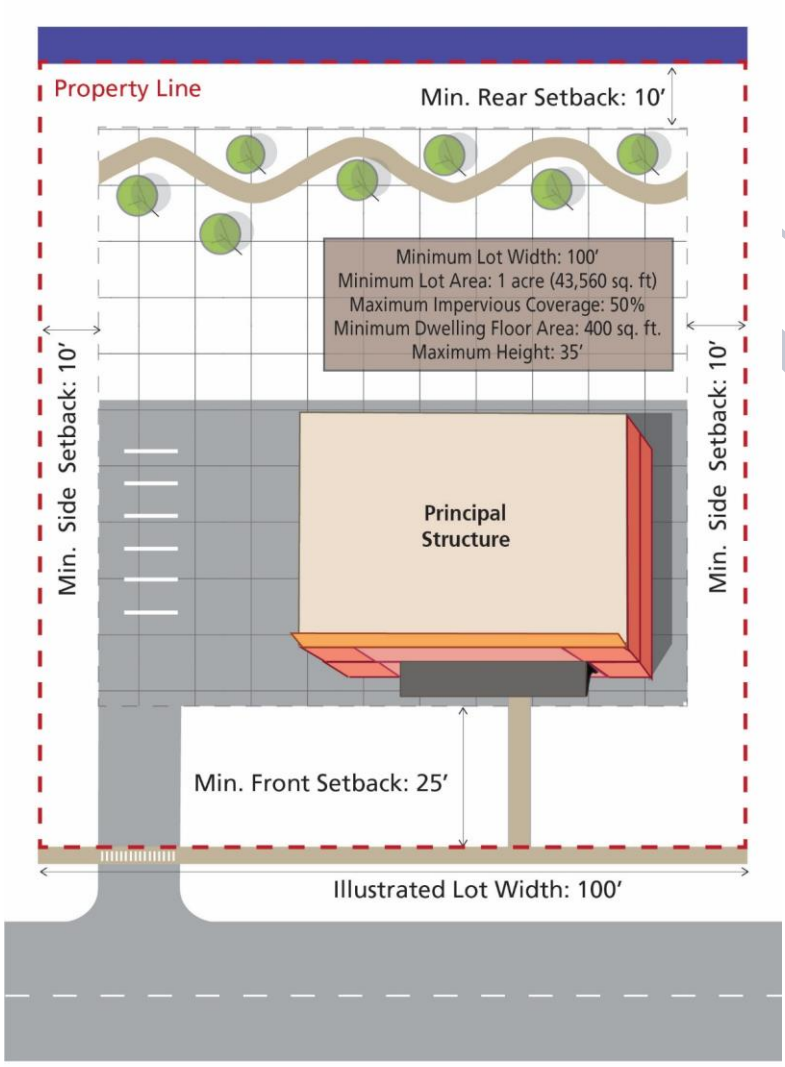
3.8.3 Dimensional Standards

W DIMENSIONAL STANDARDS	
Lot Occupation	
Minimum Lot Width	100 feet
Minimum Lot Area	43,560 sq ft
Maximum Impervious Coverage	50 %
Principal Structure	
Front Setback	25 feet
Side Setback	10 feet
Rear Setback	10 feet
Maximum Height	35 feet
Minimum Dwelling Size	400 sq ft
Accessory Structures	
Permitted Locations	Side and Rear Yards
Separation	10 feet between structures
Setbacks	Same as Principal
Maximum Height	14 feet
NOTES: Additional accessory building standards located in Article 2.	

3.8.4 Fencing

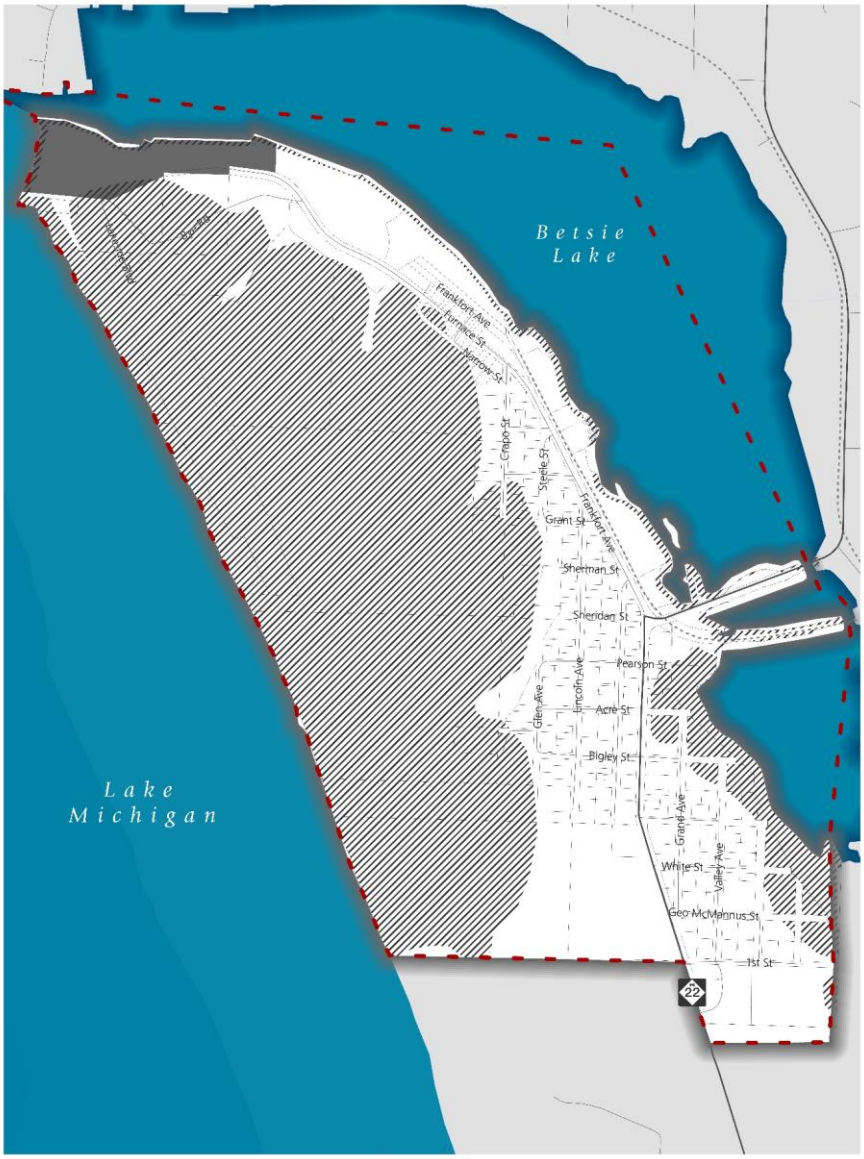
W: FENCING STANDARDS		
Item	Maximum Height	Location
Front Yard Fences	4 feet	Entirely on the property it serves
Rear & Side Yard Fences	4 feet	Entirely on the property it serves
NOTES: Additional fencing standards located in Article 2.		

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W - Waterfront District

DEEP WATER PORT DISTRICT



3.9 DW: DEEP WATER PORT ZONING DISTRICT

3.9.1 Intent & Purpose

This district is intended to provide a mix of uses that include water-related businesses and recreation but also allow for uses that require a deepwater port. This district is also designed and intended to establish an area for cultural and commercial land uses in the Village that recognizes the unique features of the Elberta Deep Water Port. A property owner may propose a unified development plan for a single property, or group of properties under single ownership, which combines recreational and commercial uses, allowing a development plan which maximizes the recreational opportunities of the Elberta Deep Water Port and provides the opportunity for public access to the water's edge through the Planned Unit Development (PUD) process.

3.9.2 Table of Regulated Uses

DW: REGULATED USES	APPROVAL TYPE	SUPPLEMENTAL STANDARDS	MINIMUM PARKING
Accessory Structures and Buildings	By Right	2.15	
Accessory Uses	By Right		
Commercial Recreation	Special Use		
Cultural and Historical Facilities	Special Use		
Deep Draft Marine Vessels	Special Use		
Educational Facilities	Special Use		
Marinas and Launching Ramps	Special Use	6.17	
Outdoor Recreation/Amusement Facilities	Special Use		
Outdoor Seating	By Right		
Planned Unit Developments (PUD)	Special Use	9.1	
Public Parks	By Right		
Public Recreation Areas	By Right		
Public Use - Critical	By Right		
Public Use - Essential	By Right		
Public Use - Supporting	By Right		
NOTES: Additional parking standards located in Article 5.			

3.9.3 Dimensional Standards

DW: DIMENSIONAL STANDARDS	
Lot Occupation	
Minimum Lot Width	100 feet
Minimum Lot Area	43,560 sq ft
Maximum Impervious Coverage	50%
Principal Structure	
Front Setback	25 feet
Side Setback	10 feet
Rear Setback	20 feet
Maximum Height	30 feet
Accessory Structures	

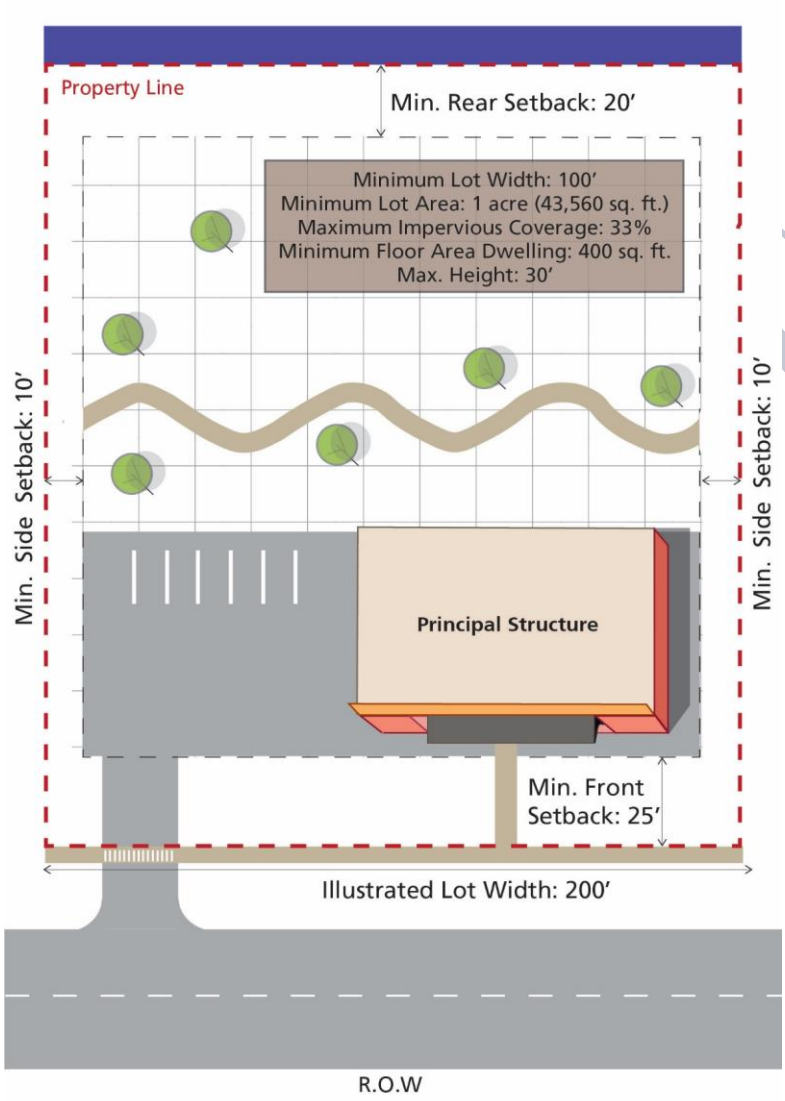
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DW: DIMENSIONAL STANDARDS	
Permitted Locations	Side and Rear Yards
Separation	10 feet between structures
Setbacks	Same as Principal
Maximum Height	14 feet
NOTES: Additional accessory building standards located in Article 2.	

3.9.4 Fencing

DW: FENCING STANDARDS		
Item	Maximum Height	Location
Front Yard Fences	4 feet	Entirely on the property it serves
Rear & Side Yard Fences	4 feet	Entirely on the property it serves
NOTES: Additional fencing standards located in Article 2.		

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DW - Deep Water Port District

ARTICLE 4: OVERLAY DISTRICTS

4.1 INTENT & PURPOSE

The Michigan Zoning Enabling Act, PA 110 of 2006 as amended, allows for the creation of special land development regulations to address problems and needs in specific areas through overlay districts. The overlay districts established under this Article have been created in order to implement the goals and objectives of the Village of Elberta Master Plan or other planning documents, and to further protect the health, safety, and welfare of the community. In addition to the standards of the base zoning districts applicable to a particular site, the standards of the established overlay district shall also apply. To the extent there is a conflict between the standards with the applicable base zoning district, the standards of the overlay district shall override.

4.2 SENSITIVE AREAS OVERLAY DISTRICT

4.2.1 Intent & Purpose

The waterways and lakes in and adjacent to the Village of Elberta are invaluable assets to the economy and quality of life and therefore must be preserved in a natural state to maintain the health of these waterways as well as the natural beauty of Northern Michigan. Additionally, the Village of Elberta is home to nearly 200 acres of vegetated, high perched, parabolic dunes along Lake Michigan, which have been designated as critical dunes and/or high-risk erosion areas, including some that have been permanently preserved. Steep slopes and bluffs, dunes, and sandy beaches are dynamic, ever-changing environments that must retain their features to function properly within the ecosystem. The dynamic nature of dunes and coastal areas makes them vulnerable to hazards like erosion that can cause damage to human life and property. According to the Michigan Department of Natural Resources (MDNR), critical dune areas protected by Part 353 represent the highest and most spectacular dunes, most of which extend along Lake Michigan's and Lake Superior's shoreline, totaling about 70,000 acres. Michigan has found that critical dune areas are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits. As such, alteration or use of critical dune areas shall occur only when the protection of the environment and the ecology is ensured.

Owners of lots on or near waterfronts and critical dunes have an added responsibility regarding the preservation and protection of these resources. Sensitive Area lots also must include shoreline protection setbacks and buffers so as to protect the health of streams, wetlands, rivers, lakes, and dunes. Shoreline structures and structures near critical dunes should be limited. The Sensitive Areas Overlay District has been established to achieve these purposes, in addition to the set of uses and dimensional requirements for the Waterfront Zoning District which this overlay district partially overlaps with.

4.2.2 Applicability

The standards of the Sensitive Areas Overlay District shall apply to all development whether public or private and/or use of the portion of a lot or parcel within:

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A. Fifty (50) feet of the ordinary high water mark of Lake Michigan

B. Fifty (50) feet of the water's edge of Betsie Lake.

C. Fifty (50) feet of the normal stream bank of natural and built watercourses such as streams, rivers, channels, and established wetlands.

D. One Hundred (100) feet of critical dune areas.

Note: The Sensitive Areas Overlay District boundary that appears on the Village's zoning map is for illustrative purposes only and is a visual aid to show the large contiguous section of this district.

4.2.3 General Requirements

A. When a lot is located in the Sensitive Areas Overlay District, the front setback shall be thirty-five (35) feet from the road right of way.

B. Compost piles, manures/fertilizers, livestock, small animal pens and other nutrient sources; solid waste, garbage, trash, discarded appliances, docks and hoists (except for off season storage between October and April), motor vehicles (not including operational watercraft), and other unsightly or potentially polluting materials shall not be stored within the Sensitive Areas Overlay District.

4.2.4 Structure Regulations

Except as provided herein, no structures or fences shall be allowed within the Sensitive Areas Overlay District except as allowed in this section. All structures shall comply with side setback requirements.

A. One wooden stairway with a maximum width of forty-eight (48) inches per parcel with a maximum of one (1) structure per one hundred (100) feet of water frontage is allowed in the district. The stairway may include landing(s) with a width not exceeding 48 inches and an area(s) not exceeding 48 square feet.

B. Ground level walkways with a maximum width of 48 inches are allowed in the district. Walkways may reasonably traverse gullies, ditches, dune ridges, and other such depressions at a height more than ground level if they meet Benzie County building code requirements for safety and do not impede pedestrian travel along the shore of Lake Michigan.

4.2.5 Limits on Disturbance to Vegetation

Natural and native vegetation shall be preserved to the greatest extent possible within the Sensitive Areas Overlay district. Trees (six (6) inches and larger in diameter) measured at four (4) feet from grade shall be preserved except within the immediate area of disturbance necessary to accommodate stairs and access paths

A. Vegetative cover that is removed for stairs and access paths shall be cut flush with the ground and the stumps and roots shall not be removed.

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B. Reasonable pruning and trimming of existing vegetation is allowed. Pruning of dead and native cover is permitted, however, the stumps and roots shall not be removed.

C. Vegetation removal is prohibited in critical dune areas unless a plan is approved by the Zoning Administrator to address invasive species not native to the area. A replanting plan that includes appropriate native species shall also be required.

4.2.6 Steep Slopes

A. Purpose. The purpose of this section is to provide for the reasonable use of steep slopes while ensuring development will not induce soil erosion, require excessive grading, increase slope instability, or create sewage disposal problems and shall be in conformance with the following objectives:

1. Guard against property damage and personal injury, and minimize the potential for erosion, slope failure, stream siltation, increased runoff, flooding and contamination of surface waters caused by the adverse effects of site preparation and construction on steep slopes.

2. Conserve existing woodlands for air and water quality benefits.

3. Permit land uses by right that are compatible with protection of steep slope areas and encourage the use of steep slope areas for open space and conservation uses.

4. Require development to avoid steep slope areas wherever possible, and require all land use, clearing, grading, and construction to satisfy development standards.

5. Regulate expansion of land use or development that existed on steep slope areas prior to enactment of these requirements.

6. Protect adjoining properties from harmful consequences of development permitted under these requirements.

B. Identification and Establishment of Steep Slope Areas:

1. A steep slope is defined and established as those parcels containing slopes of 15% or greater.

2. The determination of a steep slope area shall be made by the Village of Elberta Zoning Administrator and may be supplemented or modified by examination of an on-site survey prepared and sealed by a Registered Professional Engineer or Surveyor and submitted to the Village of Elberta for review.

3. Steep slope areas shall be further divided into the following two categories:

a. Slopes of 15% but less than 25%. Slopes of fifteen (15) percent or greater slope (e.g., sloping fifteen (15) feet or more vertical per one hundred (100) feet

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horizontal) when there are five (5) adjacent contour intervals of two (2) feet each such that, in aggregate, they delineate a slope of at least fifteen (15) percent.

b. Slopes of 25% or more. Slopes of twenty-five (25) percent or greater slope (e.g., sloping twenty-five (25) feet or more vertical per one hundred (100) feet horizontal) when there are five (5) adjacent contour intervals of two (2) feet each such that, in aggregate, they delineate a slope of at least twenty-five (25) percent.

4. The Zoning Administrator shall decide whether or not the steep slope area has been shown with sufficient accuracy on the applicant's plans.

5. The burden of proving the correct boundary with topographic information shall be on the applicant, supported by a professional engineering and/or licensed surveyor.

C. General Provisions:

1. For any lot or portion thereof lying within or containing a steep slope area, the regulations of this section shall be in addition to and take precedence over the regulations of the underlying zoning district.

2. These regulations apply to development where a land use permit is required or where the proposed land disturbing activity is greater than 1,000 square feet.

3. All uses, activities and development occurring within any steep slope area shall be undertaken only in strict compliance with the provisions of this Article, with all federal and state laws, and with all other applicable Village ordinances.

4. No new parcels shall be created unless they contain at least one half (1/2) acre of area with slopes less than 25%. If it is not feasible to provide this area in accordance with the setbacks required by the underlying zoning district, the lot area shall be increased as necessary to provide a minimum area equal to one half (1/2) acre of area with slopes less than 25%.

5. Finished slopes resulting from all cut and fill shall not exceed twenty-five (25%) percent, unless the applicant can demonstrate that steeper slopes can be stabilized and maintained adequately to the satisfaction of the Village Zoning Administrator.

6. All cuts shall be supported by retaining walls or other appropriate retaining structures when, depending upon the nature of the soil characteristics, such structures are approved by Benzie County Soil Erosion and the Village in order to prevent erosion.

7. Any fill placed on the lot shall be properly stabilized and when found necessary depending upon existing slopes and soil types, supported by retaining walls or other appropriate structures as approved by Benzie County Soil Erosion and the Village.

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8. No retaining wall shall exceed the height permitted in the zoning district and there shall be at least 10 feet between stepped retaining walls. All retaining walls greater than four (4) feet in height require a certification by a professional engineer that the wall was constructed in accordance with approved plans and applicable building codes. All retaining walls shall be in place prior to any construction of a structure.

9. Any disturbance of steep slopes shall be completed within one construction season, and disturbed areas shall not be left bare and exposed during the winter and spring thaw periods. Permanent vegetative cover shall be planted within three days after completion of grading.

10. No trees with a diameter of eight (8) inches or more at a location of 4 feet above grade shall be removed from steep slope areas unless dead or dying or selective harvesting as determined by a certified forester. Stumps shall not be removed from slopes over 15%.

11. The alignment of roads and driveways shall follow the natural topography and minimize cutting and filling.

12. The maximum grade of a road or driveway shall not exceed ten percent (10%).

D. Permit Requirements:

1. In addition to required documentation submitted for a land use permit, when a property is proposed to be developed that is located within or containing a steep slope area, the following additional information shall be submitted.

    a. A plan by a Registered Professional Engineer or Licensed Surveyor in the State of Michigan which accurately locates the proposed use and development with respect to the Steep Slope Overlay District boundaries, with all pertinent information describing the proposal, and a topographical survey with contour elevations at no greater than 2-foot intervals for the entire parcel.

2. If the proposed development of the parcel is to be located on a steep slope over 15%, the following additional information shall be provided.

    a. Proposed modifications to the existing topography and vegetative cover, as well as the means of accommodating stormwater runoff.

    b. Specifications for building construction and materials, including filling, grading, storage of materials, and water supply and sewage facilities.

    c. Documentation of any additional engineering and/or conservation techniques designed to alleviate environmental problems that may be created by the proposed activities, in compliance with municipal sedimentation and erosion control regulations.

E. Remediation on Steep Slopes:

Commented [JC2]: I do not think that we specified maximum height for retaining walls in each district, need to confirm.

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If work on a steep slope occurs in violation of this ordinance, the property owner shall cause for the steep slope to be replanted and restored to the previous condition prior to the work in violation of the ordinance. Trees shall be replaced at the following rate:

Commented [JC3]: Include list of native, deep rooted plants.

Vegetation Removed	Maturation	Planting Required (Removed Number : Required Number to Plant)
Canopy Tree	3" or less caliper	1:1
Canopy Tree	3" to 6" caliper	1:2
Canopy Tree	6" to 9" caliper	1:3
Canopy Tree	9" to 12" caliper	1:4
Canopy Tree	Greater than 12: caliper	1:5
Evergreen or Flowering Tree	8' of less in height	1:1
Evergreen or Flowering Tree	8' to 12' in height	1:2
Evergreen or Flowering Tree	12' to 16' in height	1:3
Evergreen or Flowering Tee	Greater than 16' in height	1:4
Shrub	Any Size	1:1

4.2.7 Lake Access

The following regulations are intended to limit the number of non-riparian or non-littoral land parcels, site condominiums, or condominium units that have legal access to a body of water in order to preserve the long-term quality of the adjacent waters, to promote safety, and to preserve the quality of recreational use of all waters adjacent to the village. These regulations are intended to control funneling activity – the granting or existence of a legal property right benefiting non-riparian or non-littoral land parcels, site condominiums, or condominium units which authorizes the use of a riparian or littoral land parcel, or a portion thereof, to gain access to a body of water, whether such waterfront access is gained by easement; a common element or a limited common element in a condominium development; a covenant running with the land; a lease; or another legally recognized property interest. A riparian or littoral land parcel that is a lawful nonconforming lot of record as defined in this Ordinance shall be allowed to provide the same lake access and shall be subject to the same regulations as riparian or littoral land parcels under this section.

A. Shared Waterfront Access. Except as provided herein, a total of not more than two (2) non-riparian or non-littoral land parcels, site condominiums, or condominium units, wherever located, may be benefited with legal access to a body of water over a riparian or littoral land parcel. For each non-riparian or non-littoral land parcel, site condominium, or condominium unit in excess of the two (2) benefited with the legal right to access a body of water over a riparian or littoral land parcel, the riparian or littoral land parcel providing the shared waterfront access shall have an additional fifty (50) feet of waterfront and an additional area equal to one-half (½) the minimum lot area for the zoning district in which located.

B. Waterfront Use Regulations. The following regulations shall apply to any riparian or littoral land parcel regardless of whether the riparian or littoral land parcel provides shared waterfront access:

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Except as provided in subsection D below, for each one hundred (100) feet, no person or entity may erect or maintain or cause to be erected or maintained:

1) More than one (1) dock

2) More than one (1) swim raft or other similar recreational devices or structures

3) The dock shall be limited to the length necessary to reach a continuous water depth of four (4) feet

4) Any portion of a dock located on any riparian or littoral land parcel which is situated parallel or approximately parallel to the shore of said parcel shall not exceed 50 percent of the waterfront.

5) No dock located on any riparian or littoral land parcel or swim raft or other similar recreational device or structure shall be erected or maintained in a manner which will impede the reasonable use of the waters by the owners of adjoining riparian or littoral land parcels or the general public lawfully using the water surface.

6) The locations of all docks, hoists, permanently moored boats and swim rafts or other recreational devices or structures shall comply with the side yard setbacks from the riparian boundary lines as determined under Michigan law.

7) Docks or swim rafts or other recreational devices or structures shared by the owners of adjoining riparian or littoral land parcels shall be allowed within the setbacks of the common lot line.

C. Except as provided in subsection D below, no person or entity shall moor or cause to be moored in a manner other than temporary mooring or anchorage as an incident of navigation of more than three (3) registered watercraft for every one hundred (100) feet of the waterfront property line. For the purpose of determining the number of registered watercrafts permitted under this Ordinance, no more than four (4) personal watercraft, as defined in this Ordinance, shall be used for such calculations.

D. For each additional 100 feet of the waterfront in excess of the first 100 feet of the waterfront provided for in subsections 1 and 2 above, one (1) additional dock and one (1) additional swim raft or other similar recreational devices or structures may be erected or maintained and three (3) additional registered watercraft may be moored.

E. Exception. The above regulations concerning docks, however, shall not apply to public access sites (public road endings) under the jurisdiction of the Village.

4.2.8 Shoreland Protection Strip

To minimize erosion, stabilize waterfronts, protect water quality, keep nutrients from entering waters, maintain water temperature at natural levels, preserve fish and wildlife habitat, to screen artificial structures, protect property values, and also to preserve the scenic values of waterfront areas, a natural vegetation strip shall be maintained on each parcel or lot between the ordinary high water mark or

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waters edge and a buffer line, each point of which is thirty (30) feet horizontal from and perpendicular to the ordinary high water mark or water's edge of a waterbody or the banks of a waterway.

A. Existing vegetation shading water surfaces shall be preserved to the maximum extent possible.

B. Existing natural ground cover and native vegetation shall be preserved to the fullest extent feasible, and where removed shall be replaced with native vegetation that is equally effective in retarding runoff, preventing erosion, preserving property values, preserving animal and fish habitat, and protecting community scenic values.

C. Within the shoreline protection strip, twenty (20%) percent of existing trees and shrubs may be selectively pruned or removed to enhance a filtered or corridor view of the water from the principal structure and for reasonable private riparian access to the water. A corridor view shall be established through selective cutting only after the principal structure has been sufficiently constructed to locate windows, decks or other structure features intended to enjoy and utilize a water view. Said pruning and removal activities shall be inspected by the Zoning Administrator to ensure that a live root system stays intact to provide for waterfront bank stabilization and erosion control. Tree-topping and clear cutting within the natural vegetation buffer is prohibited.

D. Dead, diseased, unsafe or fallen trees and non-native exotic or noxious plants and shrubs, including poison ivy, poison sumac, purple loosestrife, Phragmities, etc. may be removed at the homeowner's discretion provided that no stumps are removed. Landowners are encouraged to consult with the Zoning Administrator before removing dead, diseased, unsafe or fallen trees from within the natural vegetation buffer. Planting of perennial native species (ground cover, shrubs and trees) in the natural vegetation strip is encouraged.

E. The restoration of a natural shoreline protection strip conforming to the requirements of this Ordinance shall be a condition of a zoning permit for a new dwelling being issued for a lot or parcel that is included in the Sensitive Areas Overlay District. Any and all fill material placed within the shoreline protection strip shall be removed. Only soils and/or rocks, consistent with the composition of the pre-existing on-site soil and rocks, shall be allowed when necessary for growth of new vegetation. The shoreline protection strip shall be replanted solely with native vegetation as identified by the Northwest Michigan Invasive Species Network "Recommended Planting Guidelines for Municipalities". Native vegetation shall be required at a rate of one (1) tree and three (3) shrubs per twenty-five (25) lineal feet of shoreline and shall meet the minimum size standards in the table below. The remainder of the natural vegetative strip shall be planted with native wildflowers, vines, grasses, rushes, sedges, and/or ferns.

PLANTING SIZE STANDARD	
Native Plant Material	Minimum Size
Deciduous (canopy) Trees	2.5" Caliper measured at 4' above grade
Coniferous (evergreen) Trees	6' height
Deciduous Shrubs	2' height
Upright Coniferous (evergreen) Shrubs	2' height
Spreading Coniferous (evergreen) Shrubs	18" spread

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4.2.9 Wetland Areas

The Village contains many land areas which have a high water table or are wholly or partially submerged, and which are grown over with grass, shrubs, trees, and other wetland vegetation, which provides a natural habitat for numerous forms of wildlife. These water resources and wetland areas filter runoff and capture sediments, which help maintain the high quality water resources of the Village. Wetland areas also provide breeding habitat for our fisheries and wildlife resources. These areas are not naturally suitable for use or habitation by people and cannot be converted to such use without dredging, filling, clearing, excavation, and draining operations, which would disturb the natural character and purity of the adjoining waters. Wetlands also contribute to the overall beauty and character of the Village, which attract many residents and tourists. It is also important to protect wetlands since they also serve as groundwater discharge and recharge areas and can minimize storm or flood damage by hydrologic absorption and storage capacity. It is also the intent of this Section to protect wetland resources by regulation irrespective of parcel lines, small size, and/or contiguous aspect to surface waters.

All wetlands in the Village that are not contiguous to an inland lake, pond, river or stream and more than 1/8 acre in area, but less than 2 acres in area are regulated by this section. A wetland, however, shall not include the construction and operation of a water treatment pond or lagoon in compliance with the requirements of state or federal water pollution control regulations
No land division that includes wetlands will be allowed unless the resulting parcels include a conforming upland, building site on each lot.

Any development, except the uses allowed in a wetland without a permit under Section 30305 of Part 303 of the Natural Resources and Environmental Protection Act, being MCL 324.30305, shall comply with all the following requirements:

F. Provide an environmental assessment of the proposed use or development within the wetland, which assessment shall include the effects upon wetland benefits and the effects upon the water quality, flow, and levels, and the wildlife, fish, and vegetation within a contiguous lake, river, or stream.

G. The site does not support state or federal endangered or threatened species.

H. The site does not represent what is identified as a locally rare or unique ecosystem as identified by the Michigan Department of Environment, Great Lakes, and Energy (EGLE).

I. The site does not support plants or animals of an identified local importance as identified by EGLE.

J. The site does not provide flood and storm control by the hydrologic absorption and storage capacity of the wetland.

K. The site does not provide groundwater recharge documented by a public agency.

L. The site does not provide wildlife habitat by providing breeding, nesting, or feeding grounds or cover for forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.

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M. The site does not provide protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.

N. The site does not provide pollution treatment by serving as a biological and chemical oxidation basin.

O. The site does not provide erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.

P. The site does not provide sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

Q. The site does not provide sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

R. The proposed development is in the public interest. In determining whether the proposed development is in the public interest, the Planning Commission shall balance the benefit, which reasonably may be expected to accrue from the proposed development against the reasonably foreseeable detriments of the proposed development. When balancing these interests, the Planning Commission shall consider the following general criteria:

1. The relative extent of the public and private need for the proposed activity.

2. The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.

3. The extent and permanence of the beneficial or detrimental effects that the proposed activity may have on the public and private uses to which the area is suited, including the benefits the wetland provides.

4. The probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.

5. The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.

6. The size of the wetland being considered.

7. The amount of remaining wetland in the general area.

8. Proximity to any waterway.

9. Economic value, both public and private, of the proposed land change to the general area.

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ARTICLE 5: SITE DEVELOPMENT STANDARDS

5.1 INTENT & PURPOSE

The purpose of the regulations contained in this Article is to protect the public health, safety, and general welfare; to promote harmonious and orderly development; and to foster civic beauty by improving the appearance, character and economic value of civic, commercial and industrial development.

5.2 LANDSCAPING AND BUFFERS

A. Landscape Plan Review. A separate detailed landscape plan shall be submitted as part of the site plan or Special Use permit approval process required under this Ordinance. The landscape plan shall demonstrate that all requirements of this Section are met and shall include the following information.

1. Planting plans shall be prepared by a registered landscape architect, architect or master gardener.
2. Plans shall illustrate location, spacing, species, and size of proposed plant material.
3. Confirm that each landscape standard is separately met on the plans.
4. Provide, where required by the Planning Commission, typical cross sections to illustrate views from adjacent land uses, and the slope, height, and width of proposed berms or landscape elements.
5. Identify trees and other landscape elements to be preserved.
6. Delineate the location of tree protection fence and limits of grading at the perimeter of areas that to be preserved.
7. Provide details to ensure proper installation and establishment of proposed plant material.
8. Identify grass areas and other methods of ground cover.
9. Identify a landscape maintenance program including a statement that all diseased, damaged or dead materials shall be replaced in accordance with requirements of this Section.

B. Landscape Minimum Planting. All plant material shall be hardy to Benzie County, be non-invasive, be free of disease and insects, and conform to the American Standard for Nursery Stock of the American Nurserymen.

C. General Planting.

a. All areas of open space shall contain only living materials and planting beds with the exception of approved sidewalks, bike paths, signs, driveways, essential services, and detention ponds as dictated by site conditions. On redevelopment projects, the Village has the discretion to require

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installation of live materials in areas currently covered by concrete, asphalt, stone, gravel or other non-living materials to increase pervious surface and enhance the site.

b. Shrub plantings shall be designed to screen parking from being visible from the roadway or adjacent land uses, as necessary.

c. Canopy trees within the greenbelt shall be planted in a manner to create a formal, consistent tree canopy along the streetscape.

d. Plantings shall be designed to ensure adequate sight visibility for motorists, adequate clearance for pedestrians and vehicles, clearance from overhead utility lines, adequate separation from underground utilities and accessibility to fire hydrants.

e. All landscape areas shall be protected from vehicles or other types of encroachment by concrete curbing. Bumper stops, guard rails, bollards, or any other type of method shall not be permitted. On redevelopment projects where these treatments currently exist, removal is required.

D. Buffers.

a. In order to minimize the negative impacts of conflicting adjacent land uses, a planted buffer strip shall be required when any non-residential use abuts a residential district.

b. Buffer strips shall consist of native plant materials including 2 canopy trees and 4 shrubs, or 1 evergreen tree, one 1 canopy tree and 4 shrubs per 30 linear feet along the property line.

c. At a minimum, the width of the buffer shall be 10 feet, measured from the property line. This may be reduced with the addition of a wall or fence as approved by the planning commission.

d. The Planning Commission has the discretion to require a decorative screening wall within the buffer area in cases where it is determined the above referenced planting requirements are not sufficient to minimize incompatible land use impacts. In those cases, the wall shall comply with the following requirements:

i. Walls cannot extend into the required front setback.

ii. Wall height shall not be less than 4 feet nor more than 6 feet.

iii. Walls shall be constructed of the primary building material of the principal structure as determined by the Planning Commission. They shall be made of unpierced and reinforced poured concrete with false brick design or a capped brick wall, masonry brick or poured masonry decorative wall. Cement or slag blocks shall not be permitted.

E. On-Site Screening. On-site landscape screening is required for all uses in all districts, except for residential uses in residential districts, to screen outside storage areas, mechanical equipment, loading and service bays, and similar operations in a manner acceptable to the Planning Commission.

F. Parking Lots. All parking, drive aisles, loading, and other paved ground surface areas used for vehicular parking shall have internal landscaping to provide visual and climatic relief from broad expanses of

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pavement and to channelize and define logical areas for pedestrian and vehicular circulation. Permeable paving options are encouraged.

G. Maintenance.

a. Tree stakes, guy wires, and tree wrap shall be removed after completion of the initial growing season.

b. All landscaped areas shall be provided with a source of irrigation for a minimum of three (3) growing seasons.

c. The owner of the property shall be responsible for the regular maintenance of all landscaping. Landscaped areas and plant materials required by this Section shall be kept free from refuse and debris. Plant materials, including lawn, shall be maintained in a healthy growing condition, neat and orderly in appearance per the intent of the approved site plan. If any plant material required with an approved site plan dies or becomes diseased, it shall be replaced within 30 days of receiving written notice from the Village or within an extended time period as specified in said notice.

H. Landscape Waiver. The Planning Commission may determine that conditions warrant a waiver from or modification of the landscaping provisions of this Section, except for the maintenance requirements. In making such determination, the Planning Commission may consider the following criteria.

a. Presence of existing natural vegetation

b. Topography

c. Existing wetland, floodplain and poor soils areas

d. Existing and proposed building placement

e. Building heights and views

f. Types and distance to adjacent land uses

g. Dimensional conditions unique to the parcel

h. Provision of adequate sight distances for motorists

i. Health, safety and welfare of the Village

j. Future land use proposed in the Village Master Plan

k. Drainage conditions

l. For existing building expansion projects, when strict compliance would hinder the ability to meet parking requirements for the site.

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5.3 OFF-STREET PARKING

5.3.1 Scope

Off-street parking facilities shall be provided for occupants, employees, and patrons of buildings within the Village of Elberta.

5.3.2 Measurement Units

For the purpose of determining the off-street parking and loading facilities required as accessory to a use, definitions and standards are established as follows:

1. Off-Street Parking Area. An open or enclosed area directly accessible from a public or private street for parking of automobiles. Each space shall be directly accessible from a drive or aisle.

2. Seating Capacity. The number of seating units installed or indicated on plans for places of assembly. Where not indicated on plans, it shall be assumed that a seating unit will occupy 6 square feet of floor area exclusive of all aisles; where benches, pews or other similar seating is provided, each 20 inches of such seating shall be counted as one seat.

3. Employees. Wherever the parking requirement is based on employees, it shall mean the maximum number of employees on duty on the premises at 1 time or on any 2 successive shifts, whichever is the greater.

4. Off-Street Loading Space. An open space or enclosed area as part of a building directly accessible to a public street and available whenever needed for the loading or unloading of goods and products to the main use.

5.3.3 Application and Determination

1. Application for Parking Facilities. Any application for a Land Use Permit to construct a parking area shall include a site plan drawn to scale and fully dimensioned, showing the proposed design of the parking area and loading facilities to be provided in compliance with the provisions of this Article.

2. Determination of Required Parking Facilities. The Zoning Administrator shall determine the minimum number of spaces required for off-street parking by referring to the table in Section 5.3.4 and applying other applicable provisions of this Ordinance. Where the computation results in a fractional space, it shall be counted as one additional space required.

3. The Planning Commission may vary the parking requirements determined by the Zoning Administrator and this Article where it finds that due to the nature of the particular use, the requirements of the Zoning Administrator will not be adequate to provide sufficient parking or where the strict application of the requirements will result in an excess amount of parking related to the particular use.

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5.3.4 Schedule of Parking Requirements

The amount of off-street parking space required by type of use shall be determined in accordance with the following schedule:

USE	MINIMUM REQUIRED SPACES
Dwelling unit	1 per unit
Hotels, motels and other like accommodations	1 per unit; 1 per employee
Commercial	No minimum
Parking for all other uses shall be as determined by the Planning Commission. Shared parking may be considered.	

5.3.5 Design Standards

The off-street parking required by this Article shall be provided in accordance with the following requirements:

1. Each parking space shall be at least 9 feet in width and 18 feet in length.

2. Except for one and two family dwellings, each off-street parking area shall be connected to a driveway at least 20 feet in width.

3. Driveways to a parking area opening onto a major street shall not be closer than 80 feet to an intersection. No driveway to a parking area shall be closer than 20 feet to any minor street corner.

4. No parking or loading space shall be accessible to a street except by a driveway. Parking on lawns is prohibited.

5.3.6 Parking in Commercial Districts

Every parking area in a Commercial District shall meet the following requirements:

1. No parking area shall be closer than 8 feet to any residential property or right-of-way.

2. Every driveway and parking area shall be surfaced with a material that shall provide a durable material. It shall be graded and drained so that all surface water flows do not impact neighboring properties. No lighting shall shine toward dwellings or streets. All drainage plans shall be reviewed by the Zoning Administrator. When they meet the requirements, they shall be approved.

5.3.7 Location of Parking

1. One and Two Family Dwellings. The off-street parking facilities required for one and two family dwellings shall be located on the premises or plot of ground as the building the parking area is intended to serve, but shall not be considered a parking lot under the provisions of this Article.

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2. Multi-family. The off-street parking facilities for multi-family dwellings shall be located on the premises or plot of ground as the dwellings they are intended to serve, and shall consist of parking area as defined in this Article.

5.3.8 Off-Street Loading Requirements

On the same lot with every building, structure or part thereof, involving the receipt or distribution of vehicles, materials or merchandise, there shall be provided adequate space for loading and unloading services in order to avoid undue interference with public use of dedicated streets and parking areas.

5.3.9 Driveway Spacing

Except for sites with large parking lots or frontage in excess of 300 feet, driveways shall be limited to 1 per development.

5.4 EXTERIOR LIGHTING

5.4.1 Intent & Purpose

The provisions of this section are intended to control the use of outdoor, artificial illuminating devices emitting rays into the night sky by:

1. Encouraging good lighting practices such that lighting systems are designed to save energy and money;
2. Minimize glare;
3. Protect the use and enjoyment of surrounding property; and
4. Increase nighttime safety, utility, security and productivity.

5.4.2 Exemptions

The following uses and activities shall be exempt from the standards of this section, provided they do not create glare perceptible to persons operating motor vehicles in the public right-of-way:

1. New Technology: The Zoning Administrator may grant exceptions to the material, light source, or method of installation standards in this section in consideration of any new state-of-the-art technology, so long as the exception still meets all other applicable standards of this section.
2. Residential Lighting: Low intensity residential decorative lighting, such as porch lights or low-level façade and landscape lighting, provided any such lights are directed toward the residential building or land.
3. Holiday Decorations: Provided the decorative exterior lighting shall not include searchlights, floodlights, or stroboscopic lights.
4. Neon Lights: Displayed in windows or part of an approved sign.

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5. Flag Lighting: Luminaires used for the illumination of the flag of the United States of America.

6. Temporary Lighting: Associated with an approved temporary event permitted by this Ordinance.

7. Statutory Authority: Circumstances where federal or state laws, rules or regulations take precedence over the provisions of this section, or where fire, police, emergency, or repair personnel need light for temporary or emergency situations, or lighting that is only activated at the time of power outages.

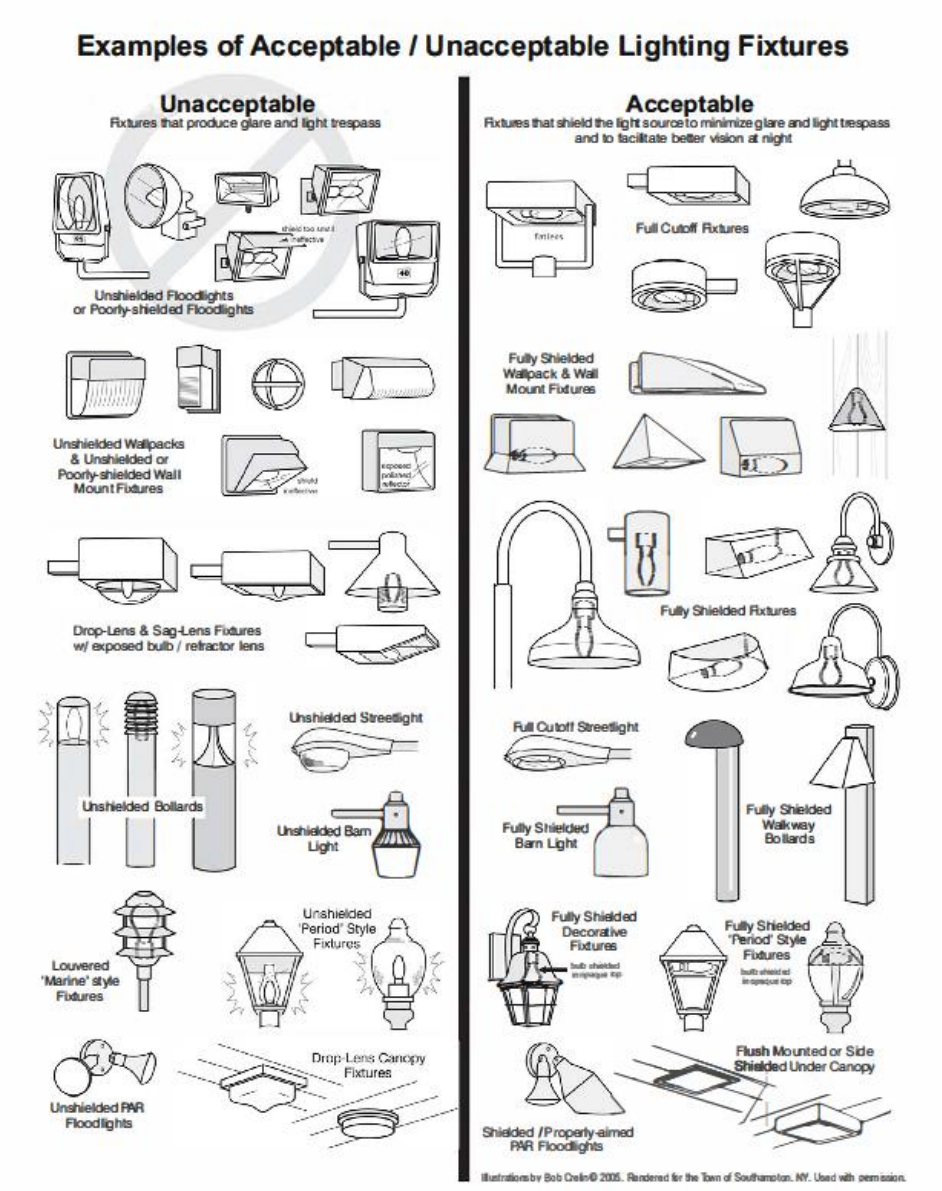
5.4.3 Shielding & Filtration

1. All nonexempt exterior lighting shall by hooded and/or louvered to prevent light from spilling over onto neighboring properties and rights-of-ways.

2. All lighting fixtures shall have one hundred (100%) percent cut-off shielding that prevents light from being emitted above a horizontal plane the lowest direct light emitting part of the luminaire.

3. Light sources shall be located as to minimize the hazards of glare, and all poles or standards used to support outdoor light fixtures shall be coated with a material that minimizes glare for the light source.

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Examples of Acceptable / Unacceptable Lighting Fixtures
Unacceptable
Fixtures that produce glare and light trespass
Unshielded Floodlights or Poorly-shielded Floodlights
Unshielded Wallpacks & Unshielded or Poorly-shielded Wall Mount Fixtures
Drop-Lens & Sag-Lens Fixtures w/ exposed bulb / refractor lens
Unshielded Bollards
Unshielded Streetlight
Unshielded Barn Light
Louvered 'Marine' style Fixtures
Unshielded 'Period' Style Fixtures
Unshielded PAR Floodlights
Drop-Lens Canopy Fixtures
Acceptable
Fixtures that shield the light source to minimize glare and light trespass and to facilitate better vision at night
Full Cutoff Fixtures
Fully Shielded Wallpack & Wall Mount Fixtures
Fully Shielded Fixtures
Full Cutoff Streetlight
Fully Shielded Barn Light
Fully Shielded Walkway Bollards
Fully Shielded Decorative Fixtures
Fully Shielded 'Period' Style Fixtures
Shielded / Properly-aimed PAR Floodlights
Flush Mounted or Side Shielded Under Canopy
Illustrations by Bob Crelin © 2005. Rendered for the Town of Southampton, NY. Used with permission.

5.4.4 Illuminations

Illumination levels within a site shall ensure that a site is adequately, but not excessively lit, in order to provide visibility, safety, and security without unnecessarily contributing to light pollution and negatively impacting neighboring properties.

1. Intensity: The maximum intensity of light within any site shall not exceed the following standards, measured in footcandles (fc) at grade:

INTENSITY STANDARD	
At any point within the site	10.0
Average for the overall site	5.0
At any lot boundary or road right-of-way	0.5

5.5 SIGNS

Commented [JC4]: Look at Police Power Ordinance #16

A. The following conditions shall apply to all signs erected or located in any district:

1. All signs shall conform to all applicable codes and Ordinances of the Village. A Sign Permit shall be required for the erection, construction or alteration of any sign. All sign permits shall be approved by the Zoning Administrator. The Zoning Administrator shall approve a sign permit if the sign conforms to the requirements of the zoning district in which the proposed sign is located and the requirements of this Article. An approved sign permit is not transferable between alternate sites or locations within a Zoning District or between zoning districts.

Commented [NE5]: Does the Village have police power sign ordinances?

Generally, signs are regulated through the zoning ordinance. I may need to review any police power ordinance relating to signs to ensure it is consistent with Michigan law.

2. No flashing, oscillating or intermittent type of illuminated sign or display shall be permitted in any zoning district. No colored lights shall be used at any location or in any manner so as to be confused with or construed as traffic control devices.

3. No sign shall be located in, project into, or overhang a public right-of-way or dedicated public easement, except as otherwise provided in this Ordinance.

4. No sign otherwise permitted shall project above or beyond the maximum height limitation of the use district in which it is located and no sign shall be located on the roof of any building or accessory building.

5. Illumination of signs is permitted provided that the light from any illuminated sign shall be so shaded or directed that the light intensity is does not trespass off the subject property, is not objectionable to surrounding areas and is not hazardous to pedestrians or vehicle operators.

6. The following signs shall be exempt from the permit requirement: temporary signs; incidental signs which are intended to direct the flow of pedestrian and vehicular traffic on private property and do not exceed 2 square feet in area per side and 4 feet in height and contain no advertising; signs erected for traffic safety purposes by public road agencies; federal, state, county, or local required signs on private property not to exceed 6 square feet; painting, repainting, cleaning, and other normal maintenance and repair of a sign or any sign structure unless a structural change is made; authorized signs of the state or a political subdivision of the

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state; flags bearing the official design of a nation, state, municipality, educational institution, church or fraternal organization; flags bearing the official seal or emblem of a company or corporation including related slogans, messages or graphics; permanent signs on vending machines or ice containers indicating only the contents of such devices and no commercial message provided that such devices must be located within 10 feet of the building; and banner signs installed by the Village, intended to announce civic activities, promote general business interests, or otherwise convey public information. Such signs shall be attached top and bottom (or 2 sides) to permanent structural members on a post or building erected for another purpose.

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B. Temporary Signs. Temporary signs shall be permitted anywhere within the Village and shall conform with all setback requirements. All ground mounted temporary signs shall not exceed a height of 6 feet above ground level.

Commented [NE6]: Define temporary sign in the definitions. The Village can also put a time limit on the erection of temporary signs - like they need to be removed every night, or can be in place for no longer than a month.

C. Signs in Residential Districts.

1. Signs shall indicate only the address, name of occupant(s), name of structure, identification of an on premise home occupation or any practical combination of the foregoing. Signs may also indicate the name of a customary home occupation as described in Article 2, PROVIDED that the information of such signs is limited to the name of the home occupation.

2. Signs shall not exceed 3 square feet in area in all Residential Districts. Where three or more establishments share a structure (are contiguous), an additional 3 square feet identity sign per establishment is permitted in a combined sign.

3. Illumination, if used, shall be directed such that it shines only on the sign or on the premises. The illumination wattage per sign shall not exceed 400 watts, incandescent light or equal.

D. Signs in Commercial Districts.

1. Wall signs shall not exceed a total area of 1 ½ square feet for each 1 lineal foot of building frontage or ½ square foot for each 1 lineal foot of lot frontage, whichever results in the larger sign area, provided that the maximum total area of all permitted signs for any establishment shall not exceed 40 square feet.

2. Where frontage is on more than one street, only the signs computed with the frontage of that street shall face that street.

3. Where two or more establishments share a sign, the tota1 area of that sign shall not exceed 50 square feet.

4. Flat wall signs may be located anywhere on the face of the building.

5. All projecting or freestanding signs shall be 25% smaller in area than a permitted wall sign and shall have a minimum clearance of 8 feet above a sidewalk and 15 feet above alleys or driveways.

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6. Permitted freestanding or ground mounted signs may be located anywhere on the premises PROVIDED that the sign is:

    a. Not located closer than 3 feet from any side lot line,

    b. does not obstruct pedestrian traffic,

    c. clear vision of vehicle operators or maintenance of any sidewalk, street or other right-of-way.

7. Freestanding signs may be extended up to 20 feet above the average ground level at the base of the sign.

8. Signs shall not project above the roofline.

E. Signs in Waterfront Commercial, Conservation, and Deep Water Port Districts. The number, size and location of ground signs shall be determined by the intended use of the premises, subject to the review and approval of the Planning Commission during site plan review.

5.6 STORMWATER MANAGEMENT

5.6.1 Intent & Purpose

The purpose of this section is to provide adequate measures for the retention, detention, and distribution of stormwater in a manner that minimizes the possibility of adverse impacts on both water quantity and water quality during development.

5.6.2 Applicability

No development, shall take place except in conformity with an approved stormwater management plan.

5.6.3 Stormwater Management Facilities

1. Level of Service Standard: Stormwater detention shall mitigate peak flow rates to predevelopment or existing development conditions.

2. Low Impact Development Stormwater Management: Low Impact Development (LID) stormwater management techniques are a set of small-scale stormwater management practices which mimic and work with nature to reduce water runoff and pollutants and provide a natural open space while reducing the site development area necessary for a traditional stormwater basin. For example, required landscaping areas may also function as bio-swales or retention basins. All projects shall incorporate low impact development (LID) water quality technologies. LID water quality technologies shall include, but are not limited to, rain gardens, rooftop gardens, vegetated swales, cisterns, permeable pavers, porous pavement, and filtered stormwater structures will be required on site as a component of the overall stormwater plan. The Planning Commission has the authority to determine the type of LID that will be used as part of the approval process.

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3. Pretreatment Facilities: Where stormwater will be directed to municipal storm sewer systems, the use of pre-treatment structures such as oil-water separators shall be required.

4. Maintenance: On-site detention facilities shall be privately owned and shall be maintained in their designed state. A maintenance schedule may be required by the Village prior to approval of a site plan.

5.7 NONMOTORIZED TRANSPORTATION

Pedestrian sidewalks and other non-motorized ways shall be constructed to provide pedestrian access along areas designated by the Village, at such a time as any adjacent parcel is improved either by new construction or expansion of existing land uses. Sidewalks shall be provided in all districts adjacent to all public rights of way.

Sidewalk construction shall meet the following requirements:

A. Meet the current construction specifications of the Michigan Department of Transportation.

B. Sidewalks shall extend across the entire frontage of the property.

C. The sidewalk shall be located wherever possible within the road right-of-way. However, the sidewalk may be located outside of the right-of-way to avoid obstructions or as parrot of a designated bike path and shall be located so as to insure connection and continuity with existing or future walks or bike paths on adjoining properties.

D. Sidewalk maintenance including replacement in the case of inadequate construction as determined by the Zoning Administrator shall be the responsibility of the adjacent parcel owner.

Commented [JC8]: This is vague, should there be a sidewalk ordinance? See if one exists.

Commented [JC9R8]: See if Village CIP includes sidewalk maintenance.

Commented [JC10]: Snow removal.

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ARTICLE 6: SUPPLEMENTAL USE STANDARDS

6.1 INTENT & PURPOSE

It is the purpose of this Article to provide regulations for miscellaneous and other requirements that may or may not apply in all zoning districts. In addition to the applicable standards elsewhere in this Ordinance, the following standards apply to specific uses. The following sections identify specific requirements for these particular land uses. Where zoning district regulations require a special use permit for the specific use, the requirements the following standards shall be met prior to approval of the Special Use.

6.2 ACCESSORY DWELLING UNITS

Commented [JC11]: Need to Include Junior ADU's.

Accessory dwelling units (ADU's) are intended to provide flexible housing options in the Village by allowing homeowners to establish a second dwelling unit on their property. ADU's encourage affordable housing, infill development and sustainable practices. ADU's are subject to the following standards:

A. ADU's shall be limited to permitted districts and properties with single-family dwelling units as the principal use. ADU's shall be subordinate to the single-family dwelling unit.

B. ADU's may be rented short-term (less than 28 days) with the appropriate permits and provided the owner resides in the primary dwelling on the property.

C. ADU's shall have their own separate entrance, kitchen, sleeping area, and full bathroom facilities.

D. ADU's may be attached to the single-family dwelling unit and may occupy a basement, first floor or second floor of the principal dwelling, or may occupy a separate, detached accessory building.

E. Detached ADU's shall be connected to a drinking water supply and sanitary sewage disposal system in the same manner as is required for the principal dwelling unit.

F. All ADU's shall meet applicable building and fire codes.

G. Building materials and designs used on detached ADU's or additions to the principal dwelling for an attached ADU, shall be of similar style as that of the principal dwelling.

H. The minimum dwelling size shall be three hundred (300) square feet.

I. The maximize dwelling size shall not exceed eight hundred (800) square feet, or the size of the principal dwelling unit, whichever is less.

J. ADU's are not condominiums, multi-family, mobile homes or recreational vehicles.

K. ADU's shall be set on a permanent foundation.

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6.3 AUTOMOBILE WASH

A. The minimum area of the site shall be 15,000 square feet.

B. The minimum street frontage shall be 100 feet.

C. All lighting shall be installed in a manner which will not cause direct illumination on adjacent properties or public thoroughfares.

D. Except for self-service (coin operated) power washes, the auto wash shall be completely enclosed in a building except that steam cleaning or vacuuming may be permitted outside the building when the parcel does not abut a residential use or district.

6.4 AUTOMOBILE SERVICE STATIONS

A. Except for repairs that must be completed before a disabled vehicle can be relocated into an enclosed building, all repair services shall be conducted within a completely enclosed building.

B. Minimum lot area shall be 7,500 square feet, with a minimum width of 150 feet.

C. The proposed site shall have at least one property line on a major or minor street.

D. The station pumps and service drives shall be considered part of the building, and the buildings and accessory structures shall maintain the minimum setback requirements.

E. The building shall not be located closer than 20 feet to any property line in a Residential Zoning District or an existing residential dwelling unit.

F. No installations, except walls or fencing and permitted signs, lighting, and essential services, may be constructed closer than 15 feet to the line of any street right-of-way.

G. Hydraulic hoists, pits, and all lubrication, greasing, automobile washing, and repair equipment shall be entirely enclosed within a building.

H. No more than two driveway approaches shall be permitted directly from any major street nor more than one driveway approach from any minor street.

I. If the service station or permitted building site fronts on 2 or more streets, the driveways shall be located as far from the street intersection as practicable, but no less than 20 feet.

J. No driveway or curb cut for a driveway shall be located within ten feet of an adjoining property line.

K. The entire service area shall be paved with a permanent surface of any suitable material.

L. All vehicles shall be stored within the building or within an opaque fence. Vehicles storage shall not be permitted to exceed 72 hours.

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6.5 AUTOMOBILE REPAIR SHOPS

A. Except for repairs that must be completed before a disabled vehicle can be relocated into an enclosed building, all repair activities shall be conducted wholly within a completely enclosed building.

B. Any outdoor storage of vehicles and equipment shall be screened from view on all sides by a properly maintained opaque fence, except if there is an existing vegetative buffer acceptable to the Planning Commission.

6.6 BOARDING ROOMS

Renting of rooms within single-family detached dwellings shall be permitted subject to the following conditions:

A. The exterior of the structure shall not be altered from its single family character and appearance.

B. There shall be no separate or additional kitchen facility or facilities for roomers.

C. Parking shall be provided on the lot in accordance with the provisions of this district.

D. On-site parking shall be provided at one space per room in accordance with the provisions of this Ordinance.

E. The number of rental rooms shall not exceed two (2) per single family detached dwelling..

6.7 BUNGALOW / COTTAGE COURTS

Bungalow or cottage courts shall be designed to meet the following development standards:

BUNGALOW / COTTAGE COURTS	
Setbacks	
Front	Same as principal structure
Side	Same as principal structure
Rear	Same as principal structure
Between Units	5 feet
Area Requirements	
Minimum Lot Size	2,000 sq ft / dwelling unit
Building Requirements	
Minimum Square Feet	400 sq ft
Maximum Square Feet	1,000 sq ft
Minimum Number of Buildings	3
Maximum Finish Floor Elevation Above Grade	18 inches
Entrance	Each unit shall have an entrance facing the court with direct sidewalk connectivity from the unit to the street.
Parking	Parking prohibited between dwelling units and court, and between development and right-of-way
Required Open Space	
Minimum Area	400 sq ft / dwelling unit

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BUNGALOW / COTTAGE COURTS	
Limitations	Required setbacks, stormwater management facilities, driveways and parking stalls shall not be included in the minimum open space calculations.
Orientation	Each court shall open directly to a street.

Examples (for illustrative purposes only)





6.8 CAMPGROUNDS

A. Campgrounds shall comply with the provisions of Part 125 of the Michigan Public Health Code as amended.

B. No campgrounds shall be located except with direct access to a major thoroughfare, or with a minimum lot width of not less than 50 feet for the portion used for entrance and exit. No entrance or exist shall be through a residential district or shall require movement of traffic from the campground through a residential district.

C. The minimum size of a campground shall be 3 acres.

D. Campsites may be rented by the day or week or for indefinite periods or sold PROVIDED, however, that no site shall be occupied as a permanent or principal residence.

E. Management headquarters, recreational facilities, toilets, showers, off-street parking areas, laundry facilities and other uses and structures customarily incidental to the operation of a campground are permitted as accessory uses PROVIDED that:

   1. Such accessory uses shall not occupy more than 10% of the area of the campground.

   2. Such accessory uses shall be restricted in their use to occupants of the campground and their guests.

   3. Such accessory uses shall present no visible evidence of their commercial character which would attract customers other than occupants of the campground and their guests.

F. No campsite shall be so located that any part intended for sleeping purposes is within 100 feet of the right-of-way line of any public road or highway. Setback spaces shall be occupied by plant materials and appropriately landscaped. Plant materials shall be of sufficient size when installed to assure immediate

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and effective screening of the park from adjacent roads and properties. The plans, specifications and proposed arrangement of such plantings shall be prepared by a registered landscape architect.

G. The campground site plan shall be subject to the review and approval of the Benzie County Health Department.

6.9 DRIVE -IN OR DRIVE-THRU FACILITIES OR ESTABLISHMENTS

Commented [JC12]: I found no inconsistencies with Article 3 p. 46 - SUP required in NC district. Would like to prohibit.

A. Drive-In or Drive-Thru Facilities and Establishments are only permitted on M-22.

B. Driveway openings shall be located as far from street intersections as practical but in no case closer than 100 feet (measured from the nearest right-of-way line to the edge of such driveway).

C. No drive shall be closer to any other drive than 75 feet.

D. Vehicular circulation patterns into and out of such businesses shall be located and designed to minimize disruption of and conflicts with thru traffic movement on abutting streets.

E. All buildings shall be set back a minimum distance of 30 feet from any adjacent right-of-way line.

F. All refuse containers shall be located in the rear yard and be screened from view by a 6-foot high fence or wall of sound construction.

6.10 DWELLING UNITS

A. All dwelling units shall comply in all respects with the Michigan Residential Code and the Michigan Uniform Energy Code as promulgated by the Michigan State Construction Code Commission under provisions of Public Act 230 of 1972, as amended. Or the "Mobile Home Construction and Safety Standards", as promulgated by the United States Department of Housing and Urban Development, being 24 CFR 3280, and as from time to time such standard may be amended.

1. Foundations: A permanent foundation constructed on-site in accordance with said Michigan Residential Codes and shall have the same perimeter dimension of the dwelling and constructed of such material and type as required in the said Michigan Residential Code for dwellings or, in the case of mobile homes, that dwelling shall be installed pursuant to the manufacturer's set-up instructions and shall be secured to the foundation by an anchoring system or device complying with the rules and regulation of the Michigan Mobile Home Commission or said Michigan Residential Code, whichever is stricter, and with the wheels removed shall not have any exposed towing mechanism, undercarriage, or chassis.

2. The dwelling shall meet or exceed all applicable roof snow load and strength requirements.

B. The minimum width of any single dwelling unit shall be twenty (20) feet for at least sixty-seven (67) percent of its length, measured between the exterior part of the walls having the greatest length.

C. All dwellings shall be connected to a public sewer system and water supply system, consistent with the Code of Ordinances. If sewer or municipal water is not available, consistent with the Code of

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Ordinances, a dwelling shall have a septic system and water well approved by the Benzie-Leelanau County Health Department.

D. Any addition to a dwelling shall be permanently attached to the principal structure and shall include construction of a foundation, and no addition shall involve placing a bearing load on a mobile home. Any addition shall meet all requirements of the Michigan Construction Code and be aesthetically compatible in design and appearance with the original structure.

Mobile homes sited on individual lots shall meet the standards for minimum lot size, yard set-backs, minimum floor area and minimum dwelling unit width for the district in which they are located and shall meet the following additional standards.

A. Mobile homes shall be attached to an approved permanent foundation or basement and shall be anchored using a system that meets the Michigan Manufactured Housing Commission requirements.

B. Mobile homes shall be installed according to manufacturer's set up requirements, and the construction of the unit shall comply with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended.

C. The wheels, axles and towing assembly shall be removed from a mobile home before the unit is attached to the foundation. Additionally, no mobile home shall have any exposed undercarriage or chassis.

D. Mobile homes shall not be used as an accessory building.

6.11 EXTRACTIVE INDUSTRIES

Commented [JC13]: Can this use be banned from Conservation District?

A. All uses shall be established and maintained in accordance with all applicable State of Michigan Statutes.

B. The Village Council may require the applicant to file a performance bond of sufficient amount to assure completion of the work following excavation, as required by this Section.

C. No fixed machinery shall be erected or maintained within one hundred (100) feet of any property or street line.

D. The use shall be enclosed by a fence or suitable plantings six (6) feet or more in height for the entire periphery of the property.

E. No slope shall exceed an angle with the horizontal of forty-five degrees (45°).

F. At all stages of operations, pits or quarries shall be completely and continually drained of water when not in use or supervised by a watchman. All slopes and banks shall be graded and treated to prevent erosion or any other potential deterioration.

G. No building shall be erected on the premises except as temporary shelter for machinery or field office.

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H. The Village Council shall establish routes for truck movement to and from the site in order to minimize the wear on public streets and to prevent hazards and damage to properties in the Village. That portion of access roads within the area of operation shall be provided with a dustless surface.

I. All installations shall be maintained in a neat, orderly condition so as to prevent injury to property, any individual, or the Village in general.

J. Proper measures, as determined by the Village Council, shall be taken to minimize the nuisance of noise and flying dust or rock. Such measures may include limitations upon the practice of stockpiling excavating materials on the site.

K. When excavation and removal operations are completed, the excavated area shall be graded so that no gradients in disturbed earth shall be steeper than a slope of three (3) to one (1) in horizontal-vertical gradient. A layer of gravel topsoil shall be spread over the excavated areas to minimum depth of four inches in accordance with an approved contour plan furnished by the applicant. The area shall be seeded with a perennial rye grass, or other similar soil-holding material, and maintained by the applicant until the area is stabilized.

6.12 GASOLINE SERVICE STATIONS

A. All accessory uses and services shall be conducted within a completely enclosed building.

B. The minimum lot size shall be 7,500 square feet, with a minimum lot width of 150 feet.

C. Any buildings that are part of a Gasoline Service Station shall be set back 20 feet from all street right-of-way lines and shall not be closer than 25 feet to any property line of a residential zoning district.

D. No more than 2 driveway approaches shall be permitted directly from any other public street.

6.13 GOLF FACILITIES & COUNTRY CLUBS

Golf facilities and country clubs, including accessory uses to a golf course such as eating or drinking establishments, driving ranges and retail sales directly connected with the conduct of the principal use.

A. Miniature golf courses are not included in this provision.

B. The site shall be immediately accessible from a major or minor street and all ingress and egress shall be directly onto or from the streets.

C. The site should be located such that it enhances the surrounding uses and such that it does not interfere with any surrounding activities by creating a nuisance or hazards.

D. Minimum site area shall be at least 60 acres for 9 holes and 110 acres for 18 holes.

E. Lighting shall be shielded to reduce glare and shall direct light away from all residential lands, which adjoin the site.

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F. No building shall be closer than 50 feet to any property or street line.

6.14 HOTELS, MOTELS & OTHER TRANSIENT LODGING

A. Minimum floor area shall contain not less than 125 square feet per guest unit shall be provided.

B. The maximum number of guests per unit shall not exceed 6 persons.

C. If required by the Planning Commission, buildings shall set back no less than 20 feet from any street, unless adjacent to a residential district, in which case, the building shall set back not less than 30 feet from any street, and in all instances, the building shall be no less than 40 feet from any side or rear property line.

D. Uses such as swimming pools and other outdoor recreational uses, meeting rooms, restaurants, taverns or bars, and a caretaker's or proprietor's residence shall be permitted provided that these uses are located on the same site as the principal use to which they are accessory. Appropriate permits shall have been obtained from regulating County or State agencies.

E. Rental of snowmobiles, ATVs or similar vehicles, boats and other marine equipment, in conjunction with the operation of the establishment shall be prohibited.

F. Activities made available to guests shall be on the lot used for the facility or on lands under the direct control of the operator either by ownership or lease. Outdoor gatherings of guests or other individuals shall be carried on in such a manner and at such hours so as to not be disruptive to neighboring properties.

G. The maximum number of rental units which may be developed at any single location shall be 20.

H. Accessory uses, including swimming pools, shall be as approved as part of the Special Use permit approval process.

6.15 HOME OCCUPATION REQUIREMENTS

All home occupations, as defined in Article 14, shall meet all of the following conditions:

A. A zoning permit is not required, but that shall not be interpreted as any home occupation being relieved of the standards in this Section.

B. The home occupation shall be operated in its entirety within the principal dwelling or a residential type attached garage or within any other accessory building located on the lot.

C. The activity is carried out by the person(s) who reside within the principal dwelling, and no more than 1 persons residing elsewhere is employed at this location.

D. The use of the dwelling unit and residential type garage for the home occupation shall be clearly incidental and subordinate to its use for residential purposes, and not more than 25 % of the floor area of the dwelling unit (excluding garage) shall be used in the conduct of the home occupation.

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E. No alteration to the exterior of the residential dwelling, accessory building or yard that alters the residential character of the premises is permitted. One sign, not exceeding 3 square feet in area, non-illuminated, freestanding or mounted flat against the wall of the main building will be allowed.

F. The occupation shall not involve any alteration or construction not customarily found in dwellings. Additions to a dwelling for the purpose of conducting a Home Occupation shall be of an architectural style that is compatible with the architecture of the dwelling and shall be designed so that the addition can be used for dwelling purposes if the home occupation is discontinued.

G. The home occupation shall not generate vehicular traffic beyond that normally generated by standard single family homes in the residential neighborhood. Parking shall be provided off of the street and on the premises. The designated parking area shall be in similar size to the parking areas for the surrounding housing units on the street.

H. No sale or rental of goods shall be allowed on the premises except as secondary and incidental to the furnishing of a service.

I. No retail or other sales shall be permitted on the premises unless they are clearly incidental and directly related to the conduct of the home occupation. No outdoor storage of goods and/or materials of any kind.

6.16 KENNELS

A. Minimum lot area shall be one (1) acre.

B. All structures that are used for animal occupancy shall be fifty (50) feet from all property lines.

C. All animal runs and outdoor areas designated for use by animals shall be fifty (50) feet from all property lines.

6.17 MARINAS AND LAUNCHING RAMPS FOR COMMERCIAL OPERATIONS.

A. The lot for the marina shall abut and have direct access to a major or minor street.

B. Marinas shall be designed and/or operated, through natural or mechanical circulation of water, so that there will be no accumulation of algae, weeds, or garbage upon the marina waters.

C. All provisions for the storing and disposing of fuels, oils, and waste products, including daily generated garbage, shall meet county, state, and federal standards. The applicant shall document the availability and capacity of sewage facilities to handle the anticipated volume of wastes.

D. Marinas shall be designed to minimize negative impacts upon neighboring properties including lighting, glare, and unsightliness. Considerations to minimize negative impacts shall include, but not be limited to: height, type, and hours of operation of lighting fixtures, including night-sky protection measures; location of parking areas, boat ramps, and access roads and drives; location of storage buildings and restroom facilities; location of heavy pedestrian traffic areas; and landscaping and screening.

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E. The applicant shall submit, as part of the site plan application, minimum-operating rules for the management of the marina which shall effectively assure that the marina will be operated in a manner compatible with surrounding land uses, including rules regarding noise and hours of operation and prohibition of fish cleaning except at approved fish cleaning stations.

F. Any dangerous or dilapidated waterfront structure, including docks, shall be removed or repaired within 30 days after notice of such condition by the Zoning Administrator.

G. Special measures shall be taken to preserve vegetation around shoreline areas to prevent soil erosion.

H. All applicants shall provide documentation, in the form of a written spill contingency plan, of their capability to respond as rapidly and effectively as possible to contain any spills of petroleum or other hazardous materials. Such plan shall include a list of clean-up equipment and its location, fuel pump operation and emergency shut-down procedures, spill containment and removal procedures, and the training of marina staff.

I. Marinas shall meet all applicable standards and regulations of the Department of Natural Resources, Department of Environment, Great Lakes and Energy (EGLE), U.S. Army Corps of Engineers, and all other county, state, and federal agencies having regulatory authority over the use of, or construction upon, the affected surface waters and bottom lands.

J. To the extent that the number of boat dockage slips proposed for a marina affects the ability to meet the regulations and criteria of subparagraphs 4 - 7, the Planning Commission may limit the number of boat dockage slips as necessary to achieve such conformance.

K. The Planning Commission may waive under site plan review one or more (or portions) of the above regulations if 4 boats or less are to be docked.

6.18 OFF-SITE PUBLIC OR PRIVATE PARKING

A. Ingress and Egress: All points of ingress and egress shall be positioned as to not create a nuisance from noise, vehicle lights or other disturbances to adjacent residentially zoned properties or uses.

B. Surface Parking Lots: All public or private surface parking lots shall be completely screened on all sides with a landscape hedge, masonry wall, opaque fence or combination thereof that shall have a minimum height of three feet six inches (3’ 6”).

C. Parking Structures: Parking structures in which all parking is completely enclosed within a structure shall be exempt from the screening requirements of surface parking lots. The architecture of the parking structure shall be consistent and/or compatible with the development of the surrounding neighborhood.

6.19 SHORT-TERM RENTALS

A. Sufficient parking for the rental use shall be provided on the property as off-street parking, with a minimum of one (1) off-street parking space.

B. The short-term rental shall have designated location for boats, bikes, jet ski, and personal watercraft.

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C. A contact person shall be available within 2 hours for the purpose of responding promptly to the complaints regarding the conduct of occupants of the short-term rental unit.

6.20 TOWERS -- COMMUNICATION SYSTEMS (TELEVISION, RADIO, CELL PHONE)

A. General Requirements

1. Except for authorized administratively approvable uses under subsection 2,

    a. The minimum lot size shall be 3 acres.

    b. The lot shall be so located that at least one property line abuts a major thoroughfare of not less than 120 feet of right-of-way and the ingress and egress shall be directly upon said thoroughfare.

    c. Towers shall be set back a distance equal to the height of the tower from all property lines but in no case shall a tower be taller than 180 feet.

    d. In Residential Districts, such towers shall not exceed 40 feet in height.

    e. A landscape buffer with a minimum height of 6 feet shall be required to screen the structure base, accessory buildings and enclosure from adjacent uses and public rights-of-way. A maintenance plan detailing maintenance for landscaping shall be submitted with the application.

    f. No tower shall be erected within 500 feet of Lake Michigan.

    g. Accessory structures shall not exceed 600 square feet of gross building area. Accessory buildings shall be a maximum of 14 feet high and shall be set back in accordance with the requirements for principal buildings in that zoning district.

2. Before any tower is considered, the applicant shall demonstrate in writing that there are no other colocation options available in the area and provide a map that illustrates existing and known proposed wireless communication facilities within the Village of Elberta and adjacent communities, which are relevant in terms of potential colocation or to demonstrate the need for the proposed facility.

3. Any nonconforming situations on the site shall be brought into conformance prior to the erection of the wireless communication facility.

4. Towers shall not be located within parking lots or other areas where they will interfere with the operation of a business on the property.

5. There shall not be displayed on the tower advertising or identification of any kind intended to be visible from the ground or other structures, except as required for emergency purposes.

6. No tower shall be constructed as a speculative tower.

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7. Prior to construction, each tower shall have at least one contracted carrier and evidence shall be provided of such contract at the time of application.

8. Colocation (the locating more than one antenna on one tower) is required. Each tower shall be designed and built to accommodate multiple antennas.

9. The name, address and phone number of the person to contact for engineering, maintenance and other notice purposes shall be provided at the time of application and shall be continuously updated during all times the facility is on the premises.

10. If a tower ceases to operate for a period of 6 months, the tower shall be deemed abandoned and shall be removed upon written notice by the Zoning Administrator within 1 year of abandonment.

11. All towers shall meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within 6 months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

12. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views. Any aviation hazard lighting shall be detailed on the plans.

B. Administratively Approvable Wireless Telecommunications Colocations and Equipment

1. Wireless communications equipment is a permitted use of property and is not subject to special land use approval or any other approval under this act if all of the following requirements are met:

    a. The wireless communications equipment will be collocated on an existing wireless communications support structure or in an existing equipment compound.

    b. The existing wireless communications support structure or existing equipment compound is in compliance with the local unit of government's zoning ordinance or was approved by the appropriate zoning body or official for the local unit of government.

    c. The proposed collocation will not do any of the following:

        1. Increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.
        2. Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.

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3. Increase the area of the existing equipment compound to greater than 2,500 square feet.

d. The proposed collocation complies with the terms and conditions of any previous final approval of the wireless communications support structure or equipment compound by the appropriate zoning body or official of the local unit of government.

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ARTICLE 7: SITE PLAN REVIEW

Commented [JC14]: Per Josh - will need to update applications to be consistent w ordinance ck lists. Require escrow for SW. Look at Frankfort Ex.

7.1 INTENT & PURPOSE

The purpose of this Article is to ensure that developments are designed to integrate well with adjacent developments, minimize nuisance impacts on adjoining parcels, ensure safe and functional traffic access and parking, minimize impacts on sensitive environmental resources, and promote development that is compatible with the Village's small-town character.

7.2 SITE PLAN REVIEW BY PLANNING COMMISSION REQUIRED

Commented [JC15]: Per Josh - spell out steps, allow flexibility for ZA to approve, introduce a simple site plan review w/ PC takes heat off ZA.

Requiring Site Plan Review gives the Planning Commission an opportunity to review development proposals in a concise and consistent manner. The use of the site plan review process ensures that the use and physical changes to the property occurs as it was planned and represented by the developer and approved by the Planning Commission. Site Plan Review shall be required for the following uses and circumstances:

A. All new uses and/or structures except one-family or two-family residential units, associated accessory structures to one-family or two-family residential units, and agricultural buildings.

B. Expansion or renovation of an existing use (structure or lot), other than one-family or two-family residential use, which increases the existing floor space more than twenty-five (25) percent.

C. Other uses as required by this Ordinance.

7.3 SITE PLAN REVIEW REQUIREMENT

Site plans that do not involve or are not related to special uses shall be reviewed by the Planning Commission, which shall make the final decision on such plans. Site plans for Special Uses shall receive a recommendation from the Planning Commission and a final decision from the Village Council. All Site Plan applications shall be on forms approved by the Village Council.

7.4 STANDARDS FOR SITE PLAN APPROVAL

The Village shall not approve a site plan unless it meets each and every one of the following criteria that are applicable to the use under consideration:

A. That the applicant may legally apply for site plan review.

B. That all required information has been provided.

C. That the proposed development conforms to all regulations of the zoning district in which it is located and all other applicable standards and requirements of this Ordinance, including but not limited to, supplementary regulations.

D. That the plan meets the standards of other governmental agencies where applicable and that the approval of these agencies has been obtained or is assured.

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E. That the soil conditions are suitable for excavation and site preparation and that organic, wet, or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.

F. That the movement of vehicular and pedestrian traffic within the site and in relation to access streets will be safe and convenient. All buildings or groups of buildings shall be so arranged as to permit convenient and direct emergency vehicle access.

G. That the development will be designed, constructed, operated, and maintained to be harmonious, compatible, and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the area or neighborhood in which it is proposed to be located.

H. That the site plan shows the use will be adequately served by necessary improvements, including but not limited to, sewage collection and treatment, potable water supply, storm drainage, lighting, roads and parking.

I. That the site plan is adequate to provide for the health, safety and general welfare of the persons and property on the site and in the neighboring community.

J. That the project and related improvements shall be designed to include the conservation and protection of existing natural resources and features, such as lakes, ponds, streams, wetlands, floodplains, steep slopes, groundwater, trees and wooded areas, and to protect land and water resources from pollution, including pollution of soils, groundwater, rivers, streams, lakes, ponds, and wetlands. The proposed development shall respect the natural topography to the maximum extent possible by minimizing the amount of cutting, filling and grading required.

K. The site design provides reasonable visual and sound privacy, including that the location of buildings, outside refuse receptacles, parking areas, lighting, fences or obscuring walls, and utility areas will minimize adverse effects of the proposed use for the occupants of that property and the tenants, owners, and occupants of surrounding properties. Exterior lighting shall be designed so that it is deflected away from adjoining properties, directed downward, visual glare is minimized, and so that it does not impede vision of drivers along adjacent streets. Off-street parking, loading and unloading areas, outside refuse storage areas, and other storage areas that are visible from adjacent homes or from public rights-of-way, are effectively screened at an adequate height.

L. That there is a proper relationship between roadways and proposed service drives, driveways, and parking areas to encourage the safety and convenience of pedestrian and vehicular traffic. The site plan includes the minimum number of driveways required to provide reasonable access. Driveways are spaced as far apart from intersections and other driveways as practical to reduce accident and congestion potential. Sharing driveways and parking with adjacent uses is encouraged.

M. That the site plan provides for proper development of roads, easements, and public utilities and protects the general health, safety, and welfare of the Village and its residents.

N. That storm water detention, retention, transport, and drainage facilities shall be designed to conserve and enhance the natural storm water system on site, including the storage and filtering capacity of

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wetlands, watercourses, and water bodies, and/or the infiltration capability of the natural landscape. Storm water facilities shall not cause flooding or the potential for pollution of surface or groundwater, on-site or off-site. Storm water facilities shall conform with the requirements of the county drain commissioner.

O. That sites at which hazardous substances, hazardous wastes, or potentially polluting materials are stored, used or generated shall be designed to prevent spills and discharges of such materials to the air, surface of the ground, groundwater, lakes, streams, rivers or wetlands.

P. That abandoned water wells (wells no longer in use or in disrepair), abandoned monitoring wells, and cisterns shall be plugged in accordance with regulations and procedures of the Michigan Department of Environmental Quality and the County or District Health Department.

Q. Site Appearance: Landscaping, earth berms, fencing, signs, walls, structures and other site features shall be designed and located on the site so that the proposed development is aesthetically pleasing and harmonious with nearby existing or future developments.

R. Circulation: Every structure or dwelling unit shall be provided with adequate means of ingress and egress via public streets and walkways. The site plan shall provide a pedestrian circulation system that is insulated as completely as is reasonably possible from the vehicular circulation system. The arrangement of public and common ways for vehicular and pedestrian circulation shall respect the pattern of existing or planned streets or pedestrian ways in the vicinity of the site. The width of streets and drives shall be appropriate for the volume of traffic they will carry. All streets shall be developed in accordance with any adopted Village private road standards, or if a public road, the County Road Commission specifications.

S. Soil Erosion and Sedimentation: The proposed development shall include measures to prevent soil erosion and sedimentation during and upon completion of construction, in accordance with the current Benzie County Building Safety & Code Enforcement Department.

T. Danger from Fire and Hazards: The level of vulnerability to injury or loss from incidents involving fire and hazardous materials or processes shall not exceed the capability of the Village to respond to such incidents so as to prevent injury and loss of life and property. In making such an evaluation, the Village shall consider the location, type, characteristics, quantities, and use of materials or processes in relation to the personnel, training, equipment and materials, and emergency response plans and capabilities of the Village. Sites that include significant storage of flammable or hazardous materials or waste, fuels, salt, or chemicals shall be designed to prevent spills and discharges of polluting materials to the surface of the ground, groundwater, and public sewer system.

U. Health and Safety Concerns: Any use in any zoning district shall comply with applicable federal, state, county, and local health and pollution laws and regulations with respect to noise, dust, smoke and other air pollutants, vibration, glare, heat, fire and explosive hazards, gases, electromagnetic radiation, radioactive materials, and toxic and hazardous materials.

V. That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility services, drainage, or soil erosion.

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W. That outdoor storage of garbage and refuse is contained, screened from view, and located so as not to be a nuisance to the subject property or neighboring properties.

X. That the proposed building or use is in accord with the spirit and purpose of this Ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.

Y. If the site plan involves a special use, that it meets the requirements of Article 8, as evidence by a Special Use permit.

Z. Conformance: Site plans shall conform to all applicable requirements of state and federal statutes and the Village of Elberta Master Plan, and approval may be conditioned on the applicant receiving necessary state and federal permits before the actual zoning permit authorizing the site plan is granted.

7.5 SITE PLAN - INFORMATION REQUIRED

When designing a site layout: scale and design compatibility, circulation of light and air, provision of adequate access to and around buildings for fire and police protection services, arrangements conducive to enhancing the environmental quality of the site when developed, preserving or enhancing scenic views, minimizing the extent of impervious ground cover and minimizing the destruction of natural features which contribute to environmental quality should all be considered.

An application for site plan review shall be submitted on a form provided by the Village and signed by the legal property owner with the required items presented in the table below. Required items shall be demonstrated on the site plan drawings, written narrative/submitted documentation, or both as indicated in the table.

7.5.1 Table of Site Plan Application Requirements

Site Plan – Information Required			
Site Plan Item	**Description**	**Shown on Site Plan or Drawing Set**	**Written Narrative/ Submissions**
1	Name of proposed development.	X	X
2	Existing and proposed use of the property.	X	X
3	Location map, address and legal description of the property, dimensions including length, width, frontage and area of the site.	X	
4	A scaled black and white elevation drawing of all sides of the building and, if requested, 11" x 17" color elevations of all sides of the building depicting the color and character of all materials.	X	
5	Name, address, phone number and email address of the property owner and the applicant (including basis of representation).	X	
6	Title block, scale, north arrow, and date of plan.	X	
7	Location and exterior dimensions of proposed buildings/structures; outline; floor area; distances between buildings/structures; height in feet and stories;	X	

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Site Plan – Information Required			
Site Plan Item	**Description**	**Shown on Site Plan or Drawing Set**	**Written Narrative/ Submissions**
	finished floor elevations and number and type of dwelling units (where applicable).		
8	Location and general alignment of all proposed streets and drives; right-of-way where applicable; surface area, width dimension; location and typical details of curbs; acceleration, deceleration, passing and turning lanes, and approaches, with details (where applicable); location and width of all entries and exits and curve-radii.	X	
9	Proposed parking location and lot dimensions, space and aisle dimensions, angles of spaces, surface type and total number of spaces.	X	
10	Location and size of open areas and recreation areas, if applicable; percentage of open areas or recreational areas if applicable.	X	
11	Existing zoning classification of property, delineation of required and proposed district regulations, dwelling unit schedule, density of development, lot area per dwelling unit for residential projects, lot coverage (percent), location and size of required buffers, if applicable.	X	
12	Area of intended filling and/or cutting, outline of existing buildings/structures and drives, existing natural and man-made features to be retained or removed.	X	
13	Existing building, structures and other improvements, including drives, utility poles and towers, easements, pipelines, excavations, ditches (elevations and drainage directions), bridges, culverts and a clear indication of all improvements to remain and to be removed.	X	
14	Adjacent land uses and zoning, location of adjacent buildings, drives and streets.	X	
15	Location and area of development phases, building program for each phase, projected schedule of development by phase.	X	X
16	Location and width of all existing and proposed easements on the site.	X	
17	Location and alignment of all proposed streets and drives; right-of-way where applicable; surface type and width, and typical cross-section of same showing surface, base, and sub-surface materials and dimensions; location and typical depth of curbs; acceleration, deceleration, turning and passing lanes and approaches, with details (where applicable); location, width, surface elevations and grades of all entries and exits; curve radii.	X	
18	Location and dimensions of proposed parking lots; number of spaces in each lot; dimensions of spaces and aisles; drainage pattern of lots; typical cross-section	X	

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Site Plan – Information Required			
Site Plan Item	**Description**	**Shown on Site Plan or Drawing Set**	**Written Narrative/ Submissions**
	showing surface, base, and sub-surface materials; angles of spaces.		
19	Location and size of proposed improvements of open spaces and recreation areas, and maintenance provisions for such areas.	X	
20	Locations, width, and surface of proposed bike paths, sidewalks and pedestrian ways.	X	
21	Location and type of proposed screens and fences; height, typical elevation and vertical section of screens, showing materials and dimensions.	X	
22	All adjacent property owned or controlled by the applicant or owner of the subject property.	X	
23	Existing topographic elevations at 2-foot contour intervals. Indicate the direction of drainage flow.	X	
24	Location and elevations of existing water courses and water bodies, including county drains and surface drainage ways, floodplains and wetlands.	X	
25	Location and status of any floor drains discharging to grade or anywhere other than public sanitary or septic systems shall be specified on the site plan.	X	
26	Description and location of any existing or proposed outdoor storage facility (above ground and below ground storage).	X	
27	Description and location of on-site wastewater treatment and disposal systems.	X	
28	Locations of proposed outdoor trash container enclosures; size, typical elevation, and vertical section of enclosures; showing materials and dimensions. Location of proposed transformers and method of screening. Location of proposed roof top units and method of screening.	X	
29	Location, type, size, area, and height of proposed signs, if applicable, at the time of submittal. If signage details are not known at time of application, a note shall be added to the plan indicating conformance with the Village's current sign regulations.	X	
30	Layout, size of lines, inverts, hydrants, drainage flow patterns, location of manholes and catch basins for proposed sanitary sewer, water and storm drainage utilities; location and size of swales, detention and retention basins and degrees of slope of sides of ponds; calculations for size of storm drainage facilities; location of electricity and telephone services; location and size of underground tanks where applicable; location and size of wells, septic tanks, and drain fields where applicable.	X	
31	If on-site water and sewer facilities are to be used, a letter of approval of same, or a copy of the permit from		X

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Site Plan – Information Required			
Site Plan Item	**Description**	**Shown on Site Plan or Drawing Set**	**Written Narrative/ Submissions**
	the Benzie County Health Department shall be submitted prior to approval of the site plan.		
32	Detention and retention basin maintenance schedules shall be included on the site plan prior to approval.	X	
33	Landscape plan showing location, size, species and diversity of plant materials.	X	
34	Description of measures to control soil erosion and sedimentation during grading and construction operations and until a permanent ground cover is established. Recommendations for such measures may be obtained from the County Soil Conservation Service.	X	
35	Location, dimensions and materials of proposed retaining walls	X	
36	Location, type, fixture detail, direction, height and photometric of outside lighting and/or decorative street lighting shall be shown on the plan.	X	

7.5.2 Community Impact Statement

A Community Impact Statement shall be provided which includes the following components, as determined by the Planning Commission:

A. An analysis of the existing traffic volumes and patterns, forecast of traffic volumes and patterns based on the proposed development and expected development of surrounding properties, analysis of turning movements and volumes at site access points and nearby intersections, and analysis of the existing and proposed level of service at the proposed access points and adjacent roadways, prepared and sealed by a registered professional engineer.

B. An evaluation of the effect on existing natural features, including wetlands, floodplains, ponds, lakes, drainageways, steep slopes, endangered species, wildlife habitat, or woodlots.

C. An analysis of the effect on public sanitary sewer and water systems in terms of consumption or capacity utilized, and consequences of such use to the utility of land uses.

D. An assessment of the activities, processes, materials, equipment and conditions of operation that may result, including lighting limits, noise, odor, smoke, trash and debris, and vibration.

E. An analysis of whether the project will be adequately served by public services and facilities such as police and fire protection, refuse disposal, and public schools.

F. An analysis, materials and documentation to demonstrate the applicant has the financial capacity to complete the project.

G. All information required by any other provision of this Ordinance governing the land use or structure for which site plan approval is sought.

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7.5.3 General Site Plan Information and Submittal Requirements

A. Upon the recommendation of the Zoning Administrator, the Zoning Administrator may waive any of the above required items based upon a finding that it is not applicable.

B. The Planning Commission, Zoning Administrator, or other party authorized by the Village may request any additional information it deems necessary in the review of a submitted site plan.

C. Evidence must also be submitted which shows the plan has been submitted for review to all affected jurisdictions, including but not limited to Benzie County Road Commission, Benzie County Drain Commissioner, local fire and emergency services providers, Health Department, Michigan Department of Transportation (MDOT), Michigan Department of Energy, Great Lakes, and Environment (EGLE), and Michigan Department of Natural Resources (DNR), where applicable. If an applicable review is not submitted, statement of a date certain for submission or the reason why their review is not applicable must be provided.

D. All site plan drawings and application shall be submitted in quantities requested by the Zoning Administrator on sheets twenty-four (24) inches by thirty-six (36) inches or eleven (11) inches by seventeen (17) inches, and in digital PDF format.

7.6 SITE PLAN REVIEW PROCESS FOR USES OTHER THAN THOSE THAT REQUIRE SPECIAL USE APPROVAL

A. An Applicant for Site Plan approval shall submit an application for review on a form approved by the Village with the number of copies of the site plan and other supporting documents as determined by the Zoning Administrator along with supplemental materials as required under Section 7.5 and pay the required fee to the Zoning Administrator.

B. The Zoning Administrator shall review the plans and other information submitted for compliance with applicable ordinances, policies, laws and standards. If the Zoning Administrator determines the application is not complete, he or she shall notify the Applicant of the information required to make the application complete. If the Zoning Administrator deems the submission to be complete, the Zoning Administrator shall forward copies of the site plan package to the Fire Department, the Department of Public Works and the Planning Commission.

C. Planning Commission Public Hearing.

1. If the Zoning Administrator finds all of the information complete, he or she shall notify the Planning Commission. A public hearing shall be scheduled at the next regular meeting to review the request. The Chairperson of the Planning Commission, at his or her discretion, may place the application on the Planning Commission's agenda for discussion prior to the public hearing.

2. A notice of the public hearing shall be published and sent in accordance with Section 12.10.

3. The Planning Commission shall conduct the required public hearing.

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4. The Planning Commission shall review the application in terms of any site development standards and Site Plan Review standards in Section 7.4.

5. Following adequate review of the application, the Planning Commission shall either approve, approve with conditions as described below in Section 7.8 or deny the site plan. The Planning Commission shall advise the applicant in writing of its actions on a site plan and minutes of the meeting shall satisfy such requirement.

7.7 SITE PLAN REVIEW PROCESS FOR SPECIAL USES

The Site Plan Review Process for Special Uses shall be conducted as part of the Special Use Review. See Article 8.

7.8 APPROVAL & CONDITIONS

The approving body shall review the application and make a determination to approve the application, require any conditions it may find necessary, or deny the application.

D. Approval: A site plan shall be approved if it contains the information required by this Ordinance, it is in compliance with this Ordinance, and if the conditions imposed under this Ordinance, other Village planning documents, other applicable Village ordinances, and state and federal statutes are met.

E. Conditions: The Planning Commission, Council or Zoning Board of Appeals (ZBA) may attach reasonable conditions with the approval of a site plan. These conditions may include those necessary to insure that public services and facilities affected by proposed land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Any conditions imposed, however, shall meet all of the following requirements:

   1. Be designed to protect natural resources, the health, safety, and welfare and the social and economic well being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

   2. Be related to the valid exercise of the police power and purposes, which are affected, by the proposed use or activity.

   3. Be necessary to meet the intent and purpose of this Ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

F. Denial: If the approving body determines that a proposed site plan does not meet the standards of this Ordinance, or otherwise will tend to be injurious to the public health, safety, welfare, or orderly development of the Village, it shall deny the application by a written decision which clearly sets forth the reason for such denial.

Commented [NE16]: ZBA does not generally review site plans. The ZBA can review variances, interpretations of the ZO, and appeals of administrative decision.

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7.9 PHASING

Where a project is proposed for development in phases, the planning and design shall be such that, upon completion, each phase shall be capable of standing on its own in terms of the presence of services, facilities, and open space, and shall contain the necessary components to insure protection of natural resources and the health, safety, and welfare of the users of the project and the residents of the surrounding area. A final project may be approved one phase at a time.

7.10 RECORD OF ACTIONS

The Village shall keep a record of decisions on all site plans on file in the Clerk's Office. The record shall include the following information:

A. Minutes: All minutes from any meeting where the site plan was considered.

B. Finding of Fact: The decision on a site plan review shall be incorporated in a finding of fact relative to the land use under consideration and shall specify the basis for the decision and any conditions imposed.

C. Final Site Plans: One (1) electronic pdf version and two (2) full size print sets (24" x 36") of the final site plans stamped by a licensed architect, landscape architect, or civil engineer. Approved site plans shall include any required revisions and the date of the revisions. The print sets shall be marked "Approved" and signed and dated by the applicant and Planning Commission Chair if approved by the Planning Commission, or the Zoning Administrator if administratively approved. Denied site plans shall be marked "Denied" and signed and dated by Planning Commission Chair if denied by the Planning Commission, or the Zoning Administrator if administratively denied.

D. Development Agreement: An approved site plan shall include a site plan development agreement outlining the approved use, any applicable conditions, and procedural process. The development agreement shall be signed and notarized by the applicant and Planning Commission Chair and included in Master Deed if applicable.

7.11 EXPIRATION & REVOCATIONS

A. A site plan shall be valid for as long as the approved site plan continues in accordance with the terms and conditions of the approved site plan. The site plan shall expire on the occurrence of one or more of the following conditions:

1. If replaced or superseded by a subsequent site plan.

2. If the Applicant requests the rescinding of the site plan.

3. If the site plan approval was issued, conditioned upon approval of a site plan and evidence of obtaining all other necessary permits, and the site plan was not submitted or the necessary permits were not obtained after 1 year.

4. If construction has not commenced and proceeded meaningfully toward completion within 1 year from date of issuance.

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B. The revocation of a site plan may occur if its recipient fails to continuously abide by its terms and conditions. The revocation procedure is as follows:

    1. The Village Council, through its designated administrators, shall notify the recipient, in writing, of any violations of Village codes or provisions of the site plan approval.

    2. The recipient shall have 30 days to correct any deficiencies to the satisfaction of The Village Council.

    3. If after 30 days any deficiencies remain, The Village Council may then revoke the site plan, or if the conditions warrant, allow additional time to correct the deficiencies.

    4. A repeat violation may cause immediate revocation of the site plan.

C. The Planning Commission may permit a 1-year extension of the approval of a site plan as a modification under Section 7.12.

D. For the purposes of this Section, a site plan is considered effective upon approval of the application by the Planning Commission.

7.12 REAPPLICATION

Whenever an application has been rejected by the Planning Commission or Zoning Administrator, a new application for the same request shall not be accepted by the Village for a period of one (1) year unless the Zoning Administrator determines that there is a substantial change in circumstances relevant to the issues or facts considered during review of the application.

7.13 AMENDMENTS & MODIFICATIONS

All site improvements shall conform to the approved site plan. If the Applicant makes any changes during construction in the development in relation to the approved plan, such changes shall be made at the Applicant's risk, without any assurances that the Planning Commission or The Village Council, as the case may be, will approve the changes. It shall be the responsibility of the Applicant to notify the Zoning Administrator, in writing, of any changes. The Zoning Administrator may require the Applicant to correct the changes so as to conform to the approved site plan or require the Applicant to make the modification request to the Planning Commission or The Village Council, as the case may be.

An approved site plan may be amended or modified under the following circumstances:

A. The Zoning Administrator may authorize insignificant deviations in site plan if the resulting use will still meet all applicable standards and requirements of this Ordinance. A deviation is insignificant if the Zoning Administrator determines it will result in no substantive changes to or impact on neighboring properties or the general public and will not noticeably change or relocate the proposed improvements to property.

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B. The Planning Commission may permit minor modifications in approved site plans if the resulting use will still meet all applicable standards and requirements of this Ordinance. The Planning Commission may decide on minor modifications without a formal application, public hearing, or payment of an additional fee. For purposes of this Section, minor modifications are those the Zoning Administrator determines have no substantial impact on neighboring properties, or the general public.

C. Any proposed amendments or modifications to an approved site plan that are not substantive deviations or minor in nature, shall be processed in the same manner as a new Special Use permit application. If new conditions are imposed by the Planning Commission, the holder of the approved site plan may reject such additional conditions by withdrawing the request for an amendment and proceeding under the existing site plan.

7.14 FEES & PERFORMANCE GUARANTEES

Fees and performance guarantees associated with the review and approval of a site plan review application shall be consistent with the requirements in Article 12.

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ARTICLE 8: SPECIAL LAND USES

8.1 INTENT & PURPOSE

This Article is intended to regulate uses which may be compatible with uses in some, but not all, locations within a particular zoning district. Among the purposes of the Special Use standards of this Article are to accomplish the following:

A. Provide a mechanism for public input on decisions involving more intense land uses.

B. Establish criteria for both new development and redevelopment consistent with the Village's land use goals and objectives as stated in the Village Master Plan.

C. Regulate the use of land on the basis of impact to the Village overall, and adjacent properties in particular.

D. Promote a planned and orderly development pattern which can be served by public facilities and services in a cost-effective manner.

E. Ensure uses can be accommodated by the environmental capability of specific sites.

F. Provide site design standards to diminish negative impacts of potentially conflicting land uses.

G. Provide greater flexibility to integrate land uses within the Village.

Each of the land uses specified in this Article require a Special Use Permit. The general standards in this Article must be met by all uses authorized by Special Use Permit. The specific requirements set forth in this Article relate to particular uses and must be met in addition to the general standards of this Article.

8.2 GENERAL REVIEW STANDARDS FOR ALL SPECIAL USES

Prior to approving a Special Use application, the Planning Commission and The Village Council shall require the following general standards be satisfied for the use at the proposed location. In addition to specific standards for individual Special Uses specified below in this Ordinance, the Planning Commission and The Village Council shall require stipulation to ensure that the following are met:

A. The Special Use will be consistent with the goals, objectives and future land use plan contemplated in the Master Plan.

B. The Special Use will be consistent with the stated intent of the zoning district, be related to the standards established in this Ordinance for the land use or activity under consideration, and be necessary to ensure compliance with those standards.

C. The Special Use will be designed, constructed, operated and maintained to be compatible with, and not significantly alter, the existing or intended character of the general vicinity in consideration of

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environmental impacts, views, aesthetics, noise, vibration, glare, air quality, drainage, traffic, property values or similar impacts.

D. The Special Use will not have a significant adverse impact on the natural environment.

E. The Special Use can be served adequately by public facilities and services such as police and fire protection, schools, drainage structures, water and sewage facilities, and refuse disposal.

F. The Special Use will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration the following:

1. Vehicular turning movements;
2. proximity and relationship to intersections;
3. adequacy of sight distances;
4. location and access of off-street parking; and
5. provisions for pedestrian traffic.

G. The Special Use will be such that the location and height of buildings or structures, and the location, nature and height of walls, fences, and landscaping will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.

H. The Special Use will be designed, located, planned, and operated to protect the natural resources, public health, safety, and welfare.

I. The Special Use will be related to the valid exercise of the police power.

J. The Special Use will promote the use of land in a socially and economically desirable manner.

K. Meet the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.

L. The Site Plan meets the requirements and standards of Article 7.

M. The Special Use meets the applicable Supplemental Use Standards of Article 6.

N. The Special Use meets the ordinance requirements of the district in which the proposed Special Use is located.

8.3 SPECIAL USE PERMIT APPLICATION REQUIREMENTS

An application for special use permit approval shall include a complete site plan review satisfying all the standards in Article 7 and a special use permit application on a form provided by the Village, a statement addressing all the general standards for approval, and payment of the required fee.

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8.4 SPECIAL USE PERMIT APPLICATION REVIEW PROCEDURES

The procedures for a special use permit application review shall follow those for a site plan review in Article 7 with the following modifications:

A. Planning Commission Review: The Planning Commission shall:

1. Review the application to determine if it satisfies the standards for special use permits, and all other applicable standards of this Ordinance. Administrative review shall not be an option for special use permit applications.

2. Hold a public hearing to consider the proposed special use permit application consistent with the procedures for a public hearing in Article 12.

3. The Planning Commission shall establish a finding of fact to make a recommendation to the Village Council to approve, approve with conditions, or deny the special use permit application.

B. Village Council Review: The Village Council shall:

1. Review the application to determine if it satisfies the standards for special land uses, and all other applicable standards of this Ordinance, and Planning Commission's recommendation.

2. Determine whether to hold an additional public hearing at their discretion or refer the application back to the Planning Commission for further consideration.

3. Make a determination to approve, approve with conditions, or deny the application. Any decision made shall include the adoption of a finding of facts to support the Village Council's decision.

8.5 SPECIAL LAND USE DETERMINATIONS

A. Approval: The special use permit application shall be approved upon determination that it is in compliance with the standards of this Ordinance, other Village planning documents, other applicable ordinances, and local, state, and federal statutes. Such approval shall affect only the lot or area thereof upon which the use is located.

B. Conditional Approval: The Planning Commission may approve a special use permit, subject to any conditions to address necessary modifications, obtain variances, or for approvals from other agencies. Conditions imposed shall meet the objectives outlined in Article 7.

C. Denial: If the Planning Commission determines that a proposed special use permit application does not meet the standards of this Ordinance, it shall deny the application.

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8.6 RECORD OF ACTIONS

All decisions on a special use permit application shall be recorded consistent with the requirements of Article 7 with the addition that the development agreement and final site plans be recorded at the Benzie County Register of Deeds Office and evidence of the record be submitted to the Village Clerk within forty-five (45) days.

8.7 EXPIRATION & REVOCATION

The standards and procedures for expiration and revocation of an approved special use permit shall be the same as those for site plan review in Article 7.

8.8 AMENDMENTS & MODIFICATIONS

The standards and procedures for amendments or modifications of an approved special use permit shall be the same as those for site plan review in Article 7, with the exception that a major amendment to an approved special use permit will require a new public hearing following the standards and process in Article 7.

8.9 FEES & PERFORMANCE GUARANTEES

Fees and performance guarantees associated with the review and approval of a special use permit application shall be consistent with the requirements in Article 12.

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ARTICLE 9: LAND DEVELOPMENT OPTIONS

9.1 PLANNED UNIT DEVELOPMENTS

9.1.1 Intent

This article provides for planned unit developments to further the health, safety, and general welfare of Village residents by permitting the Village flexibility in the regulation of land development and encouraging innovation and variety in land use and design of projects. The standards of this section are intended to encourage and provide for a more efficient arrangement of land uses, buildings, circulation systems, and infrastructure.

9.1.2 Pre-Application Process

1. *Pre-application Submission and Review.* Prior to submission of a complete application, at the discretion of the Zoning Administrator or as requested by an applicant, any proposed planned unit development may be presented to the Planning Commission for informal review and comment. Sufficient information to provide an overview of the planned unit development including proposed land uses, project density, general layout and design, proposed circulation patterns and existing site conditions shall be presented at this time. Detailed plan preparation is neither required nor encouraged at this stage in the approval process. In no case shall any representations made by the Planning Commission or its representatives, at the pre-application conference be construed as an endorsement or approval of the planned unit development.

2. *Initiation.* An owner of real property, or that owner's authorized representative, may apply for approval of a planned unit development by filing an application and fee with the Zoning Administrator. The Village may administratively petition upon majority vote of the Village Council.

3. *Completeness Review*. The Zoning Administrator shall review the application and information submitted per Section 9.1.7 of this Ordinance to determine if all required information was supplied. If the Zoning Administrator determines that all required information was not supplied, the Zoning Administrator shall send written notification to the Applicant of the deficiencies. The application for the planned unit development cannot proceed until all required information is submitted. Once all required information is submitted, the Zoning Administrator shall forward the application to the Planning Commission for its review under the procedures of this Article.

4. *Procedure*. Planned unit development applications shall be reviewed in a two step process: 1. Preliminary Review and Site Master Plan and 2. Final Site Plan Review and Decision with each step requiring the appropriate application, fee, and completeness review. The Planning Commission may authorize an alternative process for preliminary review and approval if they find that the alternative substantially accomplishes the same requirements and provides for public input. Public hearings shall be held as provided below in accordance with Section 12.10 of this Ordinance.

    1. Preliminary Review and Site Master Plan

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Preliminary review shall establish proposed land uses, project density, site layout and design, proposed vehicular and pedestrian circulation patterns, natural resource protection areas, open space, land use buffers, grading, storm water management patterns, phasing, and site servicing in compliance with this Article. Final engineering is not required for preliminary review and decision. This shall be an overall master plan for the project that the final review and plan will be based upon.

a. Planning Commission.

1. The Planning Commission shall hold a public hearing on the development application and site master plan.

2. Following review and public hearing on the application, the Planning Commission shall make a determination on whether to approve or deny the request for preliminary planned unit development and site master plan approval based on the objectives contained in Section 24.07 of this Ordinance. Approval of a planned unit development shall be incorporated in a Report and Decision Order that shall include the decision, the basis for the decision and any final conditions imposed.

3. Preliminary plans may not be changed or amended except as required by final engineering.

2. Final Site Plan Review and Decision

Final site plan review and decision shall incorporate all conditions imposed by the Planning Commission in the preliminary decision on the planned unit development. Applications for final review and decision shall not be considered until all applicable conditions have been incorporated. Agency permits can be a condition of approval of the final site plan. In addition, the applicant shall provide a detailed site plan as required in Article 7 for review and approval. Applications shall include and be processed as required in Article 7 for final site plan review and decision.

3. Land Use Permit

Prior to any changes or construction on the site, a land use permit as required by this Ordinance shall be obtained.

9.1.3 Conditions of Approval

Conditions may be imposed by the Planning Commission in the same manner as Section 7.8.

9.1.4 Phasing

Projects that contain more than one phase shall meet the requirements of Section 7.9.

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9.1.5 Expiration, Revocation, & Extensions

The process contained in Section 7.10 shall apply to planned unit developments except that initial approval shall be valid for two (2) years. A one (1) year extension may be approved by the Planning Commission provided the following are met:

1. The extension has been requested prior to the approval expiring.

2. The applicant presents reasonable evidence that the development has encountered unforeseen difficulties beyond the control of the applicant.

3. The planned unit development requirements and standards, including those of this ordinance and the Master Plan or adopted subarea plans that are reasonably related to the development, have not changed.

9.1.6 Amendments

The process contained in Section 7.12 shall apply to amendments for planned unit developments.

9.1.7 Review & Determination

1. Planned Unit Development Objectives.

   An application for a planned unit development must include demonstration that the following objectives of the planned unit development are met:

   1. To permit flexibility in the regulation of land development;

   2. To encourage innovation in land use and variety in design layout and types of structures constructed;

   3. To achieve economy and efficiency in the use of land, natural resources, energy, and the providing of public services and utilities;

   4. To encourage useful open space;

   5. To provide improved housing, governmental functions, employment and shopping opportunities particularly suited to the needs of the Village and the region.

   6. To encourage the innovative use, re-use, and improvement of existing sites and buildings; and

   7. To permit development in accordance with the policies and objectives of the Master Plan.

2. Standards for Approval.

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In order to foster the attractiveness of a planned unit development and its surrounding neighborhoods, preserve property values, provide an efficient road and utility network, ensure the movement of traffic, implement comprehensive planning, and better serve the public health, safety, and general welfare, in addition to the General Review Standards for All Special Uses contained in Section 8.2, the following criteria applies to planned unit developments. These criteria shall neither be regarded as inflexible requirements, nor are they intended to discourage creativity or innovation.

1. The uses will be compatible with the natural environment, and with adjacent and surrounding land uses and properties, and will not have an adverse economic, social or environmental impact on adjacent and surrounding land uses and properties;

2. The uses will be compatible with the capacity of existing public services and facilities, or of planned and feasible future public services and facilities, and such use is consistent with the public health, safety and welfare of the Village residents;

3. The uses and development are warranted by the design of additional amenities made possible with, and incorporated by, the development proposal;

4. Insofar as practicable, the landscape shall be preserved in its natural state by minimizing tree and soil disturbance and removal;

5. Existing important natural, historical and architectural features within the development shall be preserved;

6. Proposed buildings shall be sited harmoniously to the terrain and to other buildings in the vicinity that have a visual relationship to the proposed buildings;

7. With respect to vehicular and pedestrian circulation and parking, special attention shall be given to the location and number of access points to public streets, minimizing potential motorized/non-motorized conflict points, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, and the arrangement of parking areas that are safe and convenient and, insofar as is practicable, do not detract from the design of proposed structures and neighboring properties;

8. Landscaping is provided to ensure that proposed uses will be adequately buffered from one another and from surrounding public and private property and, where applicable, to create a pleasant pedestrian scale outdoor environment;

9. The development consolidates and maximizes useable open space;

10. The benefits of the development are not achievable under any single zoning classification; and

11. The development is compatible with the intent, purpose, and objectives of this section and of the adopted master plan.

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3. Additional Requirements.

    1. Planned unit developments shall be permitted when listed as a special use in the zoning district.

    2. No minimum lot size is required.

    3. Included with the application for preliminary review and master site plan shall be:

        a. A certified boundary survey and legal description of the property.

        b. A conceptual site plan showing the development boundaries, proposed structure locations, existing and proposed utilities, pedestrian and vehicular circulation, landscape development, areas of tree removal, earth shaping and grading, open spaces and their intended uses, recreation facilities, and such other features as might be requested.

        c. A description of the type, character, and proposed use of land and structures within the planned unit development.

        d. Statement of present ownership of all land contained in the planned unit development.

        e. Computation of total property area, open space, parking and building or structure areas.

        f. Evidence of the impact of the development on local streets, natural features, schools and utilities.

        g. Evidence of the market and economic feasibility.

        h. Such other information pertinent to the development or use.

    4. If the Planned Unit Development is to be located in the Waterfront and Conservation zoning districts, the following provisions shall control over any other requirements of this Ordinance:

        a. A substantial portion of water shoreline shall remain available for public access and be shown as part of the landscaping plan.

        b. There shall be no specific maximum density. Commercial space usage shall be limited to no more than 50% of the total building area within a mixed use building or structure including both residential and/or overnight rental accommodations and allowable uses specified in the Downtown Commercial District.

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5. If the Planned Unit Development is to be located in the Deep Water Port District, the following requirements shall control over any other requirements of this Ordinance:

    a. A portion of the water shoreline shall remain available for a public trail corridor consistent with the intent to link together surrounding trail segments and be shown as part of the landscaping plan, subject to public safety design requirements stemming from the use of the deep-water port.

    b. There shall be no specific maximum density. Commercial space usage shall be limited to no more than 40% of the total building area within a mixed use building or structure including both recreational and commercial uses allowable in the Downtown Commercial District.

Commented [JC17]: Need Federal grant language.

6. Dimensional and Use Restrictions. In acting upon an application for a Planned Unit Development, the Village may alter and establish lot limits, required facilities, buffers, open space areas, density limits, setback requirements, height limits, building size limits, off-street parking regulations, landscaping rules, and miscellaneous regulation changes consistent with the intent of this Section and the standards set forth herein. The Village may also authorize land uses not permitted in the Zoning District where the land is located, provided that such uses are consistent with the intent of this Section and the standards set forth herein. Dimensional and off-street parking area provisions of the underlying Zoning District shall not apply to the area within an approved Planned Unit Development.

9.2 SITE CONDOMINIUM DEVELOPMENTS

Pursuant to authority conferred by Section 141 of the Condominium Act, Act 59 of 1978, as amended, all condominium subdivision plans shall be reviewed and approved by the Planning Commission and Village Council. In determining whether to approve a condominium subdivision plan, the Planning Commission and Village Council shall consult with the Village Attorney, Engineer, Zoning Administrator, and Planner regarding the adequacy of the master deed, deed restrictions, utility systems and streets, subdivision layout and design and compliance with all requirements of the Condominium Act.

9.2.1 General Requirements

A. Condominium Lots: For the purposes of this ordinance, each condominium lot shall be considered equivalent to a single lot and shall comply with all regulations of the zoning district in which located. In the case of a site condominium containing single-family detached dwelling units, not more than one dwelling unit shall be located on a condominium lot, nor shall a dwelling unit be located on a condominium lot with any other principal structure or use.

B. Revision of Condominium Subdivision Plan: If the condominium subdivision plan is revised, the final site plan shall be revised accordingly and submitted for review by the Planning Commission who shall make a recommendation to the Village Council to approve or deny the application before any zoning permit may be issued, where such permit is required.

C. Amendment of Master Deed or Bylaws: Any amendment to a master deed or bylaws that affects the approved preliminary or final site plan, or any conditions of approval of a preliminary or final

site plan shall be reviewed by the Planning Commission who shall make a recommendation to the Village Council to approve or deny the application before any zoning permit may be issued, where such permit is required. The Planning Commission may require its review of an amended site plan if, in its opinion, such changes in the master deed or bylaws require corresponding changes in the approved site plan.

D. Development Agreement: The Planning Commission may require, as a condition of approval, that the applicant enter into a development agreement with the Planning Commission and the Village, incorporating therein the terms and conditions of final site plan approval, and record the same in the Benzie County Register of Deeds.

E. Relocation of Boundaries: Relocation of boundaries between adjoining condominium lots, if permitted in the condominium documents, as provided in Section 48 of the Condominium Act, shall comply with all regulations of the zoning district in which located and shall be approved by the Zoning Administrator. These requirements shall be made a part of the bylaws and recorded as part of the master deed.

F. Subdivision of Lots: Each condominium lot that results from a subdivision of another condominium lot, if such subdivision is permitted by the condominium documents, as provided in Section 49 of the Condominium Act, shall comply with all regulations of the zoning district in which located, and shall be approved by the Zoning Administrator. These requirements shall be made a part of the condominium bylaws and recorded as part of the master deed.

G. Private Streets: All site condominium subdivisions in which private streets are proposed shall be developed to the public street requirements of the Village. Site condominium subdivisions and condominium lots may abut public or private streets. All approved private streets shall include a maintenance agreement that specifies who is responsible for ongoing street maintenance including plowing.

H. Road Rights-of-Way: Road rights-of-way shall be parcels separate from individual condominium lots, and shall be accurately delineated by bearings and distances on the condominium subdivision plan and the final site plan. The right-of-way shall be for roadway purposes and for the purposes of locating, installing, maintaining, and replacing of public utilities. The developer shall dedicate easements to the Village for all public water and sanitary sewer lines and appurtenances.

I. Easement for Utilities: The site condominium subdivision plan shall include all necessary easements granted to the Village of Elberta, for the purposes of constructing, operating, inspecting, maintaining, repairing, altering, replacing and/or removing pipelines, mains, conduits and other installations of a similar character for the purpose of providing public utilities, including conveyance of sewage, water and storm water run-off across, through and under the property subject to said easement, and excavating and refilling ditches and trenches necessary for the location of said structure.

J. Monuments: Monuments shall be set at all boundary corners and deflection points and at all roads right-of- way intersection corners and deflection points. Lot irons shall be set at all condominium lot corners and deflection points of condominium lot lines. The Village Engineer may grant a delay in the setting of required monuments or irons for a reasonable time, but not

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to exceed one year, on condition that the developer deposit with the Village Clerk cash, a certified check, or an irrevocable bank letter of credit running to the Village, whichever the developer selects, in an amount as determined from time to time by resolution of the Village Council. Such deposit shall be returned to the developer upon receipt of a certificate by a surveyor registered in the State of Michigan that the monuments and irons have been set as required, within the time specified. If the developer defaults, the Village Council shall promptly require a registered surveyor to set the monuments and irons in the ground as shown on the condominium site plans, at a cost not to exceed the amount of the security deposit.

K. As-Built Drawings: A dimensionally stable copy of the as-built drawings shall be submitted to the Village Clerk and a second dimensionally stable copy shall be recorded with the Benzie County Register of Deeds.

9.2.2 Site Plan Requirements

A site condominium application submitted for consideration shall include a site plan with all the requirements outlined in Article 7.

9.2.3 Application Submission Procedures

A. Preliminary Site Plan:

3. A preliminary site plan shall be filed for approval at the time of notice of proposed action is filed with the Village. Preliminary site plans shall be reviewed by the Planning Commission who shall make a recommendation to the Village Council to approve or deny the application.

4. The preliminary site plan shall include all land that the developer intends to include in the site condominium project.

5. The preliminary site plan shall include all information required herein, except in the case of single-family detached dwelling units.

6. Dwelling units and required yards, shall be shown on the preliminary site plan. In those instances where dwelling unit plans are not known the plan may show the building envelope provided such building envelope meets all side, front and rear setback requirements of the zoning district.

B. Final Site Plan:

1. A final site plan shall be filed for review for each phase of development shown on the approved preliminary site plan. Final site plans shall be reviewed by the Planning Commission who shall make a recommendation to the Village Council to approve or deny the application.

2. A final site plan for any phase of development shall not be filed for review by the Planning Commission unless a preliminary site plan has been approved by the Planning Commission and Village Council and is in effect.

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3. A final site plan shall include all information required by Section 66 of the Condominium Act, and the master deed and bylaws. The final site plan shall also include all information required herein, except in the case of single-family detached dwelling units, location and dimensions of condominium units rather than individual buildings and required yards, shall be shown on the site plan.

4. The applicant shall provide proof of approvals by all County and State agencies required to review the condominium subdivision plan, including but not limited to the County Road Commission, County Drain Commissioner, County Health Department and the Michigan Department of Natural Resources. The Planning Commission and Village Council shall not approve a final site plan until all County and State agencies, required to review the condominium subdivision plan, have approved the condominium subdivision plan.

9.2.4 Design & Approval

A. All site condominium subdivision plans shall conform to the design, layout and improvements standards of the Village. A deposit in the form of cash, certified check, or irrevocable bank letter of credit acceptable to the Village Council shall be made with the Village of Elberta to guarantee the installation and completion of any required public sanitary sewer, water supply, drainage facilities, and public or private street and walkway improvements within a length of time agreed upon from the date of final approval of the site condominium subdivision plan by the Planning Commission and Village Council.

B. No permits for erosion control, building construction, grading, or installation of water or sanitary sewerage facilities shall be issued for property in a site condominium development until a final site plan therefore has been approved by the Village Council and is in effect. This requirement shall include contractible, conversion, and expandable site condominiums as defined in the Condominium Act (PA 59 of 1978 as amended).

C. The approval of any site condominium plan under this provision shall expire one (1) year after the date of such approval, unless actual construction and development have been commenced in accordance with said site plan prior thereto. If such construction and development is commenced within said one (1) year period, then such approval shall continue for a period of five (5) years from the date thereof; provided, however, that a lapse of more than one (1) year in continuous construction and development does not occur, in which event, said approval shall expire. Prior to such expiration date the development owner shall be notified in writing thirty (30) days in advance of the expiration date. The Zoning Administrator shall not issue a zoning permit for any type of construction on the basis of the approved site condominium plan after such approval has expired. Fees for review of expired site plan may be waived in those instances where no substantial change in conditions of the site condominium plan nor of abutting uses has taken place. In those instances where conditions have changed, the fee for review of expired site condominium plans for new site condominium plans shall be the same as for the initial submittal.

D. All site improvements including sanitary sewers, water mains, storm sewers, retention basin, site grading and private street improvements shall meet or exceed the minimum design standards of the Village of Elberta.

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E. A final survey plan of the site condominium subdivision or phase thereof shall be submitted together with a closure sheet of the external boundary and internal common areas, condominium land units, blocks of condominium units, street rights-of-way and all other land units for review and approval by the Village Engineer. The exact length and bearing of all external and internal boundaries shall be clearly shown on the plan. The bearing source of orientation of the survey plan shall conform with that of an existing adjacent recorded subdivision or other established survey

9.2.5 Notice of Proposed Action

The notification requirements stated in Section 71, of the Condominium Act (PA 59 of 1978, as amended), shall be filed with the Village of Elberta and other listed agencies.

The Village Council

9.3 MANUFACTURED HOUSING COMMUNITIES

9.3.1 Intent & Purpose

These regulations are established to allow the development of state-licensed manufactured housing communities that comply with the requirements of this Section. The preliminary plans, construction and management of a manufactured housing community, or mobile home park, as defined in Public Act 96 of 1987, as amended (the Mobile Home Commission Act (the "Act"), shall comply with the standards established and referenced in the Act and the administrative rules promulgated thereunder (the "Rules"), as provided in this Section. Manufactured housing community development standards include the anchoring and manufactured home installation specifications; plan review, distance, setback and space requirements; paving and width criteria for internal roads and sidewalks; parking provisions; screening features; safety, lighting and utility regulations established in this Section. A manufactured housing community shall, at minimum, be maintained to the construction standards established under the acts in effect when it was built and legally licensed.

9.3.2 Design and Layout

The design, layout, construction and use of a manufactured housing community shall comply with the regulations set forth in this Section, pursuant to the Manufactured Housing Commission Rules.

9.3.3 Emergency and Safety

1. Disaster, severe weather. A manufactured housing community shall provide each community resident immediately upon occupancy with written information indicating whether the local government provides a severe weather warning system or designated shelters. If a warning system or shelter is provided, the information shall describe the system and the nearest shelter location.

2. Fire. Act No. 133 of the Public Acts of 1974, being §125.771 et seq. of the Michigan Compiled Laws, which provides for home fire protection, requires that all manufactured homes built, sold, or brought into this state shall be equipped with at least 1 fire extinguisher approved by the national fire protection association and 1 smoke detector approved by the Michigan Bureau of Construction

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Codes. The homeowner of a manufactured home brought into this state for use as a dwelling shall have 90 days to comply with this requirement, under 1974 PA 133, as amended. The manufactured housing community shall provide its residents with written notification of this requirement, which may be published in the community rules.

3. Flood Areas. A manufactured home shall not be placed in a designated floodway, as determined by the Michigan Department of Environmental Quality (MDEQ), per Rule R125.1602(4).

4. General, safety and maintenance. The operator of a manufactured housing community shall maintain community equipment and facilities in a safe, sanitary condition, as required under MDEQ Rules R325.3371 and R325.3374.

5. Pest and animal control. A manufactured housing community operator shall maintain the community in a condition reasonably free of health and safety hazards resulting from insects, rodents and other animals in the care of residents. Accordingly, the manufactured housing community shall comply with the provisions of MDEQ Rules R325.3361 to R325.3363 and R325.3372.

6. Swimming pools. Swimming pools in manufactured housing communities shall comply with Michigan Administrative Code Rules R325.2111 et seq., 1978 PA 368, as amended, and Rule R125.1941(1)(f).

9.3.4 Garbage and Rubbish Disposal; Sanitation

Each manufactured home site shall use approved garbage/rubbish containers that meet the requirements of Part 5 of the Michigan Department of Environmental Quality Health Standards, Rules R325.3351 through R325.3354. The containers shall be kept in sanitary condition at all times. It shall be the responsibility of the community operator to ensure that all garbage/rubbish containers do not overflow and that all areas within the community are free of garbage/rubbish.

9.3.5 Inspections

Municipal inspections of manufactured housing communities shall comply with Section 17(2) of the Mobile Home Commission Act. The Village shall present any evidence of an alleged violation of this Act or standards promulgated under this Act to the Michigan Bureau of Construction Codes, which may refer the available evidence concerning violations of the Act to the Attorney General or the proper prosecuting attorney who, with or without a reference, may take appropriate action, as further provided in Sections 17 and 36 of the Act.

9.3.6 Installation and Anchoring

The installation of manufactured housing on each site within the community shall conform to the requirements of Rules R125.1602 and R125.1602a. All utility connections to homes within the community shall comply with the requirements of Rule R125.1603. Manufactured homes shall be installed with anchoring systems designed and constructed in compliance with the U.S. Department of Housing and Urban Development's Manufactured Home Construction and Safety Standards (24 CFR 3280.306) and approved for sale and use within Michigan by the Michigan Construction Code Commission, pursuant to Rules R125.1605 and R125.1607.

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9.3.7 Licenses and Permits

1. No manufactured housing community shall be operated without a license issued by the Michigan Bureau of Construction Codes, pursuant to Section 16 of the Act.

2. No manufactured home shall be occupied for dwelling purposes unless it is placed on a site or lot and connected to water, sanitary sewer, electrical, and other facilities as may be necessary. Occupancy shall not occur until after local inspections, permit and certificate of occupancy approvals, pursuant to 1972 PA 230, the Stille- DeRossett-Hale Single State Construction Code Act.

3. Site-constructed buildings erected within the community, such as community buildings or laundries, but not including manufactured homes and their accessory storage buildings, shall be examined by the Village for compliance with all appropriate inspection and permit requirements, pursuant to 1972 PA 230, the Stille- DeRossett-Hale Single State Construction Code Act.

4. Site plan review shall not be required for individual manufactured homes in a manufactured housing community.

9.3.8 Open and Recreational Space and Facilities

1. A manufactured housing community that contains 50 or more sites constructed under a Permit to Construct shall have not less than 2 percent of the community's gross acreage dedicated to designated open space, but in no case less than 25,000 square feet.

2. Required property boundary setbacks may not be used in the calculation of open space area.

3. Optional improvements shall comply with state codes and applicable laws and ordinances pertinent to construction, including obtaining appropriate state or local permits for the facility or structure being built.

4. If provided, recreational or athletic areas shall comply with the safety and setback standards of Rules R125.1705 and 125.1941(1), respectively.

9.3.9 Parking

A minimum of 2 hard-surfaced parking spaces shall be provided for each manufactured home site. Additional parking equal to 1 space for 3 manufactured homes shall be provided for visitor parking. Parking may be on-site or off-site.

1. If the two resident vehicle parking spaces required by this section are provided off the home site, then the parking spaces shall be adjacent to the home site and each parking space shall have a clear parking width of 10 feet and a clear length of 20 feet.

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2. If parking spaces are provided for resident vehicle parking, they shall contain individual spaces that have a clear parking width of 10 feet and a clear length of 20 feet. If vehicle parking is provided on the home site, it shall comply with both of the following provisions:

    a. The parking spaces may be either in tandem or side-by- side. If spaces are in tandem, then the width shall not be less than 10 feet and the combined length shall not be less than 40 feet. If spaces are side-by-side, then the combined width of the two parking spaces shall not be less than 20 feet and the length shall be not less than 20 feet. A minimum of one parking space for every three home sites shall be provided for visitor parking.

    b. Visitor parking shall be located within 500 feet of the home sites the parking is intended to serve, as measured along a road or sidewalk. If parking is provided for visitor parking, it shall contain individual space that have a clear parking width of 10 feet and a clear length of 20 feet.

9.3.10 Setbacks and Distances

1. Manufactured home sites shall be arranged to allow for, and manufactured homes shall be located to comply with, all of the following minimum separation distances, as measured from the wall/support line or foundation line, whichever provides the greater distance:

    a. 10 feet from an attached or detached structure or accessory of an adjacent home that may not be used for living purposes for the entire year.

    b. For a home sited parallel to an internal road, 15 feet from an adjacent home, including an attached structure that may be used for living purposes for the entire year if the adjacent home is sited next to the home on and parallel to the same internal road or intersecting internal road.

    c. 50 feet from permanent community-owned structures, such as either of the following:

        1. Club houses.

        2. Maintenance and storage facilities.

        3. 100 feet from a baseball or softball field.

        4. 25 feet from the fence of a swimming pool.

2. Attached or detached structures or accessories that may not be used for living purposes for the year shall be a minimum of 10 feet from an adjacent home or its adjacent attached or detached structures.

3. Any part of a home or an accessory structure, such as steps, porches, supported or unsupported awnings, decks, carports or garages, or similar structures shall be set back the following minimum distances:

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a. 7 feet from the edge of an internal road.

b. 7 feet from a parking space on an adjoining home site or parking bay off a home site.

c. 7 feet from a common sidewalk.

d. 25 feet from a natural or man-made lake or waterway.

1. A carport shall be in compliance with both of the following setbacks if it is completely open, at a minimum, on the 2 long sides and the entrance side:

2. Support pillars that are installed adjacent to the edge of an internal road shall be set back at least 4 feet from the edge of the internal road and 2 feet or more from the closest edge of a common sidewalk, if provided.

3. Roof overhangs shall be set back 2 feet from the edge of an internal road.

4. Steps and their attachments shall not encroach more than 3 ½ feet into parking areas.

4. Steps and their attachments shall not encroach more than 3 ½ feet into parking areas.

5. If homes, permanent buildings and other structures abut a public right- of-way, they shall not be located closer than 50 feet from the boundary line. If the boundary line runs through the center of the public road, then the 50 feet shall be measured from the road right-of-way line. This section does not apply to internal roads dedicated for public use.

9.3.11 Sidewalks

1. Common sidewalks shall be constructed in compliance with all of the following requirements:

a. Sidewalks shall have a minimum width of 3 feet and shall be constructed in compliance with Act 8 of the Public Acts of 1973, being Section 125.1361 et seq. of the Michigan Compiled Laws, an act that regulates sidewalk access to the handicapped.

b. All common sidewalks shall meet the standards established in Rule R125.1928.

2. An individual site sidewalk with a minimum width of 3 feet shall be constructed to connect at least one entrance to the home, patio, porch, or deck, and the parking spaces serving the home or a common sidewalk. These sidewalks shall meet the standards established in Rule R125.1928.

9.3.12 Skirting

1. Skirting to conceal the underbody of the home shall be installed around all manufactured homes, prior to issuance of a certificate of occupancy, and shall be installed within 60 days of the placement of the home on its site, unless weather prevents compliance with this schedule.

2. Skirting shall be vented as required by Rule R125.1604.

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3. Skirting shall be installed in a manner to resist damage under normal weather conditions and shall be properly maintained by the resident.

4. Skirting shall be aesthetically compatible with the appearance of the manufactured home.

5. All skirting shall meet the requirements established in the Manufactured Housing Commission Rules.

9.3.13 Storage

As to personal property, a manufactured home site shall be kept free of fire hazards, including combustible materials under the home.

9.3.14 Streets, Driveways and Parking Areas

All manufactured housing communities shall comply with the following design requirements:

1. Access. The community's internal roads shall have access to a public thoroughfare or shall be connected to a public thoroughfare by a permanent easement.

2. Composition & surfacing. All internal roads shall be constructed of concrete or bituminous asphalt and supported by a suitable subgrade in compliance with the standards of the American Association of State Highway and Transportation Officials (AAASHTO), pursuant to Rule R125.1922. Roads shall be maintained in a reasonably sound condition, as required under Rules R125.1924 and 1925(2)(b).

3. Curbing. If provided, internal road curbing shall be constructed of concrete or asphalt. Access to curbed sidewalks connecting to internal roads shall comply with Rule R125.1928 (a).

4. Parking spaces; streets. All internal roads shall be two-way and have driving surfaces that are not less than the following widths:

    a. Two-way, no parking 21 feet

    b. Two-way, parallel parking, 1 side 31 feet

    c. Two-way, parallel parking, 2 sides 41 feet

5. Road configurations. An internal road that has no exit at one end shall terminate with a minimum turning radius of 50 feet. Parking shall not be permitted within the turning area, which shall be posted within the turning area. A safe-site distance of 250 feet shall be provided at all intersections. Offsets at intersections or intersections of more than two internal roads are prohibited.

6. Road widths, street names, addresses & traffic control.

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a. All entrances to new communities or new entrances to expanded communities shall be a minimum of 33 feet in width. The entrance shall consist of an ingress lane and a left and right egress turning lane at the point of intersection between a public road and the community's internal road, and shall be constructed as indicated below in subsections ii through iv.

b. All turning lanes shall be a minimum of 11 feet in width and 60 feet in depth, measured from the edge of the pavement of the public road into the community.

c. The turning lane system shall be tapered into the community internal road system commencing at a minimum depth of 60 feet.

d. The ingress and right egress turning lanes of the ingress and egress road shall connect to the public road and shall have a radius determined by the local public road authority having jurisdiction. The intersection of the public road and ingress and egress road shall not have squared corners.

e. Appropriate speed and traffic control signs shall be provided on all internal roads, and a regulation stop sign shall be installed at the point of intersection with a public road, unless a traffic control device is provided.

f. Improved hard-surface driveways shall be provided on the site where necessary for convenient access to service entrances of buildings, and at delivery and collection points for fuel, refuse, and other materials, and elsewhere as needed. The minimum width of driveways shall be 10 feet. The entrance to the driveway shall have the flare or radii, and horizontal alignment for safe and convenient ingress and egress.

9.3.15 Utilities

The following utility standards shall apply to all manufactured home communities:

1. Drainage.

    1. All drainage outlet connections shall be subject to review and approval by the Benzie County Drain Commissioner.

    2. Drainage systems shall be reviewed and approved by the Michigan Department of Environmental Quality, in accordance with MDEQ Rules R325.3341 to R325.3349, pursuant to the Act.

    3. Drain utility connections shall comply with Rule R125.1603(c).

2. Electricity. Electrical systems shall be installed, maintained, operated and serviced according to the standards established in Rules R125.1603(d), R125.1603(e), R125.1603(f); R125.1708; R125.1710(2); R125.1932; R125.1933; and MDEQ Rule R325.3373(2)(c).

3. Fuel & gas heating service. The installation, maintenance, operation and service of manufactured housing community fuel and gas heating systems and connections shall comply

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with the standards contained and referenced in Rules R125.1603(b), R125.1710(1), R125.1934 through R125.1938, R125.1940(3) and MDEQ Rule R325.3373(2)(d).

4. Telephone communication lines. All telephone systems shall be installed in accordance with standards approved by the Michigan Public Service Commission or utility provider, pursuant to Rule R125.1940(2), as applicable.

5. Television. Television service installation shall comply with requirements of Rule R125.1940(1).

6. Water & sewage. All lots shall be provided with public water and sanitary sewer service, or water and sanitary services that shall be approved by the Michigan Department of Environmental Quality, pursuant to MDEQ Rules R325.3321 and R325.3331 through R325.3335. Water line connections shall meet the specifications contained in Rule R125.1603(a) and MDEQ Rule R325.3373. Water system meters shall comply with MDEQ Rule R325.3321 and Rule R125.1940a.

Commented [JC18]: Should there be a requirement for water meters and incoming pipes to be insulated? Is this covered in the Bldg or Mech. Codes?

9.3.16 Plan Review

All manufactured housing community site plan applications shall be made and all manufactured housing community site plans shall be reviewed and approved in the same manner as for site plan review as described in Article 7.

9.4 OPEN SPACE PRESERVATION DEVELOPMENT (OSPD)

9.4.1 Intent & Purpose

The purpose of an Open Space Preservation Development (OSPD) is to allow property zoned for residential uses to be developed with the same number of dwelling units but on smaller parcels than would otherwise be required by this Ordinance, in return for the preservation of part of the property in an undeveloped state.

9.4.2 Standards

1. Density Calculation: The number of permitted dwelling units in an OSPD shall be no greater than if the subject property were subdivided based upon the minimum parcel size per dwelling unit as specified in Article 3 for the respective residential use in its respective zoning district.

2. Reduction of Minimum Parcel Size: Minimum parcel size per dwelling unit in an OSPD shall be reduced to half that as specified in Article 3 for the respective use in its respective zoning district. If a subject lot of this reduced minimum parcel size is unbuildable, then the otherwise required setbacks for that lot shall be reduced by half.

3. Required Open Space: At least half of the subject property in an OSPD, as designated by the landowner, shall remain perpetually in an undeveloped state, as that phrase is defined in this Ordinance, by means of a conservation easement. Otherwise unbuildable areas such as wetlands shall not qualify as land in an undeveloped state for purposes of meeting this standard.

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4. Conservation Easement: The conservation easement shall be granted by the landowner to the Village or to a nonprofit conservation organization approved by the Village Council. The conservation easement must be approved by the Village Council in order to fulfill the requirements of this Ordinance. The Village Council may require that the conservation easement be enforceable by the Village if the Village is not the holder of the conservation easement. The conservation easement shall be recorded by the landowner at the Benzie County Register of Deeds.

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ARTICLE 10:NONCONFORMITIES

10.1 INTENT & PURPOSE

Certain existing lots, structures, and uses of lots and structures were lawful before this Article was adopted but have become nonconforming under the terms of this Article and its amendments. It is the intent of this Article to permit the nonconformities to remain until they are discontinued or removed, but not to encourage their continuation or, where discontinuance or removal is not feasible, to gradually upgrade the nonconformities to conforming status. Nonconformities shall not be enlarged, expanded, or extended, except as provided herein, and shall not be used as grounds for adding other structures and uses of lots and structures which are prohibited. Nonconformities are declared by this Article to be incompatible with the structures and uses permitted in the various districts.

10.2 GENERAL STANDARDS

A. Continuation: On or after the effective date of this ordinance or any subsequent amendments, a nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of all ordinances, statutes, or regulations in effect at that time may continue subject to this Article.

B. Change in Tenancy or Ownership: There may be a change of tenancy, ownership, or management of any existing nonconforming use or structure which does not alter the nonconforming status.

C. Special Land Uses and Variances: If a special land use or variance has been approved, the structure or use shall not be considered "nonconforming."

D. Issued Zoning Permit: Any zoning permits issued prior to the effective date of this Ordinance, or any subsequent amendments, shall be valid in accordance with its terms, even though not conforming to the provisions of this Ordinance, provided that construction is commenced within twelve (12) months after the date of permit issuance and proceeds meaningfully until completion.

E. Exception for Repairs Pursuant to Public Order: Nothing in this article shall be deemed to prevent the strengthening or restoration to a safe condition of a building or structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders it to be restored to a safe condition, provided that such restoration is not otherwise in violation of the various provisions of this ordinance prohibiting the repair or restoration of partially damaged or destroyed buildings or structures.

F. Loss of Nonconformity: A legal nonconforming use will be lost by changing to a conforming use to this Ordinance, or through vacancy, lack of operation, intent to abandon and/or actual abandonment, or otherwise for twelve (12) or more successive calendar months. If lost, any future use of such premises shall be in conformity, in their entirety, with the provisions of this ordinance. Loss of a nonconforming use shall terminate the right to continue the nonconformity.

Commented [NE19]: Under Michigan law, to lose a nonconformity, there must be intent to abandon, along with actual abandonment.

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10.3 NONCONFORMING LOTS

A. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Article, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Article. This provision shall apply even though the lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided that yard dimensions and other requirements not involving area or width, or both, of the lots shall conform to the regulations for the district in which the lot is located.

B. If 2 or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Article, and if all or part of the lots do not meet the requirements for lot width and area as established by this Article, the lands involved shall be considered to be an undivided parcel for the purpose of this Article, and no portion of the parcel or lot shall be used or sold which does not meet lot width and area requirements established by this Article, nor shall any division of the parcel or lot be made which leaves remaining any parcel or lot with width or area below the requirements stated in this Article.

10.4 NONCONFORMING USES

Where, at the effective date of adoption or amendment of this Article, lawful use of land exists that is made no longer permissible under the terms of this Article as enacted or amended, the use may be continued, so long as it remains otherwise lawful, subject to the following provisions.

A. No nonconforming uses shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Article.

B. No nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by the use at the effective date of adoption or amendment of this Article.

C. Abandonment

1. If a nonconforming use is abandoned for any reason for a period of more than twelve (12) calendar months, any subsequent use shall conform to the requirements of this Article.

2. A nonconforming use shall be determined to be abandoned if two (2) or more of the following conditions exist that demonstrate intent on the part of the property owner to abandon the nonconforming use.

    a. Whether utilities have been disconnected.

    b. Whether any signs have been removed or have fallen into disrepair.

    c. Whether any fixtures within and outside the building have been removed.

    d. Whether the property has fallen into disrepair or is considered “blighted.”

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e. Whether U.S. Mail delivery has been terminated or mail is forwarded to another address.

f. Whether the classification of the property for tax purposes has been changed to reflect another use.

g. Whether any license associated with the use has expired.

h. Whether there are any other similar changes to the nonconforming structure or use.

10.5 NONCONFORMING STRUCTURES

Where a lawful structure exists at the effective date of adoption or amendment of this Article that could not be built under the terms of this Article by reason of restrictions on area, lot coverage, height, setbacks, or other characteristics of the structure or its location on the lot, the structure may be continued so long as it remains otherwise lawful, subject to the following provisions.

A. No structure may be enlarged or altered in a way which increases its nonconformity.

B. Additions to non-conforming structures that meet all dimensional requirements are permitted.

C. Should the structure be destroyed by any means to an extent of more than 50% of replacement value at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Article.

Commented [JC20]: Is this from original ordinance? Is it needed with having C below?

D. Replacement of Damaged Nonconforming Structures: Nothing in this Ordinance shall prevent the replacement of any nonconforming building or structure damaged or destroyed by fire, windstorm, snowstorm, rainstorm, flood or other casualty damage beyond the control of the owner, provided such replacement utilizes the original structure footprint, or does not increase the original usable floor area or volume of such structure in a manner that increases nonconformities regarding setbacks or lot coverage limitations and does not include vertical or horizontal expansion within a required setback area.

Commented [NE21]: These two sections seem to be at odds. I would clarify to state that the nonconforming structure can be replaced if less than 50% was damaged/destroyed.

E. Should the structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

10.6 REPAIRS & MAINTENANCE

A. On any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing to an extent not exceeding 50% of the replacement value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this Article shall not be increased.

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B. A nonconforming structure, nonconforming portion of a structure, or a structure containing a nonconforming use which is physically unsafe or unlawful due to lack of repairs and maintenance as determined by the Zoning Administrator may be restored to a safe condition.

C. Where enlargement or structural alteration is necessary to allow compliance with health and safety laws or ordinances, the cost of the work shall not exceed 25% of the structure's fair market value, as determined by the Assessor at the time the work is done.

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ARTICLE 11: ZONING BOARD OF APPEALS

11.1 INTENT & PURPOSE

The Zoning Board of Appeals (ZBA) shall perform its duties and exercise its powers as provided by the Michigan Zoning Enabling Act and in such a way that the objectives of this Ordinance may be achieved; that there shall be a means for competent interpretation and controlling flexibility in the application of this Ordinance; and that the health, safety, and welfare of the public be served.

11.2 AUTHORITY

There is hereby established a ZBA, which shall perform its duties and exercise its power as provided for in this Ordinance and the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, in such a way that the objectives of this Ordinance shall be served, public health, safety and welfare protected, and substantial justice done.

11.3 MEMBERSHIP

A. The Village Council shall act as the ZBA.

B. All meetings of the ZBA shall be held at the call of the President of The Village Council and at such times as the ZBA may determine.

C. All meetings and hearings shall be conducted in accordance with the Michigan Open Meetings Act, as amended, being MCL 15.261 *et seq*..

D. The Clerk shall act as Secretary and shall keep minutes of the proceedings, recording the vote of each member upon each question, and indicating absences and abstentions, and shall keep records of hearings and other official action.

E. The ZBA shall have the duties and powers set forth in the Michigan Zoning Enabling Act.

F. The ZBA shall not conduct business unless a majority of the regular members of the ZBA are present.

G. A member of the ZBA who is also a member of the Planning Commission shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission. However, the member may consider and vote on other unrelated matters involving the same property.

11.4 SPECIFIED POWERS AND DUTIES OF THE ZBA

A. The ZBA shall hear and decide upon applications for dimensional (nonuse) variances and not use variances.

Commented [NE22]: Does the Village want to grant use variances? That is allowed under the MZEA see 125.3604(9). Otherwise, delete.

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B. The ZBA shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps and zoning district boundaries, and may adopt rules to govern its procedures sitting as a ZBA.

C. The ZBA shall also hear and decide on matters referred to the ZBA or upon which the ZBA is required to pass under a Zoning Ordinance adopted under this act.

D. It shall 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 adopted under this act.

E. Exceptions, Interpretations of Zoning Map, and Exercise of Specified Powers: The ZBA has the power to hear and decide, in accordance with the provisions of this Ordinance, requests for exceptions, for interpretations of the Zoning Map, and for situations on which this Ordinance specifically authorizes the ZBA to act. Any exception shall be subject to such conditions as the ZBA may require to preserve and promote the character of the zoning district in question and otherwise promote the purpose of this Ordinance, including the following:

1. Interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the Zoning Map fixing the use districts accompanying and made part of this Ordinance, where street layout existing on the ground varies from the street layout as shown on the map aforesaid.

2. Permit the modification of automobile parking spaces or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements.

3. Permit such modification of the height and area regulations as may be necessary to secure an appropriate improvement of a lot which is shaped such or so located with relation to surrounding development or physical characteristics, that it cannot otherwise be appropriately improved without such modification.

4. Permit modification of obscuring wall requirements only when such modification will not adversely affect or be detrimental to surrounding or adjacent development.

5. Permit, upon proper application, the following character of temporary use, not otherwise permitted by Section 2.29, not to exceed 12 months with the granting of 1 twelve-month extension being permissible for uses which do not require the erection of any capital improvement of a structural nature. The ZBA, in granting permits for the above temporary uses, shall do so under the following conditions:

    a. The granting of the temporary use shall in no way constitute a change in the basic uses permitted in the district nor on the property wherein the temporary use is permitted.

    b. The granting of the temporary use shall be granted in writing, stipulating all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.

Commented [SK23]: What is this? Is it defined? Should this be a use listed in the ordinance, move to Article 6? Maybe these are all PC questions

Commented [DP24R23]: There is a temporary use definition in Art. 14 and regs in Article 2 (Sec. 2.30). Recommend asking PC if they are OK with this format and this role of the ZBA to review them (might suggest moving this over to the PC's role).

c. All setbacks, land coverage, off-street parking, lighting and other requirements to be considered in protecting the public health, safety, peace, morals, comfort, convenience and general welfare of the inhabitants of the Village, shall be made at the discretion of the ZBA.

d. In classifying uses as not requiring capital improvement, the ZBA shall determine that they are either demountable structures related to the permitted use of the land; recreation developments, such as, but not limited to: golf-driving ranges and outdoor archery courts; or structures which do not require foundations, heating systems or sanitary connections.

e. The use shall be in harmony with the general character of the district.

f. No temporary use permit shall be granted without first giving notice as required in Section 12.10. Further, the ZBA shall seek the review and recommendation of the Planning Commission prior to the taking of any action.

6. Non-Conforming Expansions and Substitutions: Review Process

a. Where the ZBA is required to determine whether a non- conforming-structure may be enlarged, expanded, or extended, an application shall be made and the request shall be reviewed in the manner as described for dimensional variances under Section 11.7.A. of this Ordinance. In addition, the application shall be evaluated using the review criteria in Section 11.4.E.7 below.

7. Non-Conforming Expansions and Substitutions: Review Criteria

a. Where the ZBA is required to determine whether a non- conforming-structure may be enlarged, expanded, or extended, the following provisions shall apply.

i. The reasons for a nonconformity shall be limited to minimum lot area, lot width, required setbacks, off-street loading and parking requirements, and transition strip and landscape strip requirements. In no case shall a structure that is nonconforming because of lot coverage, floor area ratio, lot area per dwelling unit, or height requirements be permitted to expand without removing the nonconformity, except as permitted under a variance.

ii. The existing and proposed uses of such buildings and structures shall be permitted in the district in which situated.

iii. The proposed improvement shall conform to all requirements of the district in which situated.

iv. The ZBA shall determine the following in approving a request:

1. that the retention of the nonconforming structure is reasonably necessary for the proposed improvement or that requiring removal of such structure would cause undue hardship;

Commented [NE25]: I am not sure what this section is trying to be. It appears to be trying to allow for certain use variances, which the Village is allowed to grant.

If the Village wants to allow for use variances, then I would delete this section and create a use variance section similar to Section 11.6.

Nothing I have seen in the MZEA talks about "exceptions" these are generally called variances.

2. that the proposed enlarged or otherwise improved nonconforming structure will not adversely affect the public health, safety and welfare; and

3. that the proposed improvement is reasonably necessary for continuation of the use on the lot.

v. The ZBA shall have authority to require modification of the nonconformity, where such requirement is reasonable, as a condition for approval. The ZBA may attach other conditions for its approval which it deems necessary to protect the public health, safety and welfare.

vi. All expansions permitted under this Section shall meet all requirements of Article 7, Site Plan Review, if a site plan is required. The site plan may be a final site plan and shall be first reviewed by the Planning Commission. Upon completion of its review, the Planning Commission shall transmit the site plan and a summary of its review to the ZBA. The ZBA shall then act upon the request and return the site plan and the ZBA's findings on the request to the Planning Commission for its action.

b. A structure which does not conform to zoning ordinance regulation shall not substitute for, or replace, any conforming or nonconforming structure.

Commented [JC26]: ?

Commented [NE27]: Under Michigan law, nonconforming uses cannot be expanded. The underlying goal is to make nonconforming uses more conforming to the zoning ordinance.

Other municipalities have a special use requirement to allow for the expansion of a nonconforming use onto more of the lot where it exists, and do not require a SUP for the expansion wholly within the building with no structural changes. I do not believe this should be in the purview of the ZBA, but rather the PC with a SUP if the Village wants to keep this type of provision.

11.5 PROCEDURE

A. Appeal or other action to be considered by the ZBA shall be submitted to the Zoning Administrator, by any person authorized by the Michigan Zoning Enabling Act, on a form approved by the Village. Such application shall be submitted 30 days prior to the date the ZBA will consider the request. .

B. APPLICATIONS. Applications to the ZBA shall be filed with the Village, and a fee established by Village Council shall be paid at the time the application is filed. Applications shall be accompanied by the following information, where applicable:

1. Applicant's name, mailing address, telephone number, and email address.

2. The address, location and tax identification number for each parcel involved in the request.

3. Zoning classification of the subject parcel(s) and all abutting parcels.

4. A site plan, drawn to scale, with a north-arrow, existing lot lines, street rights-of-way, easements, buildings and structures, existing and proposed setback dimensions, parking areas, driveways, sidewalks, and other site improvements. Topographical features and wetlands, dunes, and waters edge shall also be included.

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5. A letter from the applicant summarizing the request and stating the reasons for the request based on the standards for approval.

6. Any additional information deemed necessary by the Zoning Administrator or ZBA to make a determination on the issue in question.

7. For dimensional variances, any lot lines relevant to the variance must be staked by a professional surveyor prior to the hearing.

C. The Zoning Administrator shall review the application for appeal to determine if it is complete. If the application is not complete, the Zoning Administrator shall return it to the Applicant with a list of deficiencies. The Zoning Administrator shall also verify that the relief sought in the application is within the ZBA's jurisdiction. If the application is complete, the Zoning Administrator shall schedule with the ZBA a time for the appeal to be heard and shall prepare a written report on the application to the ZBA. The Zoning Administrator or the body from which the appeal was taken shall immediately transmit to the ZBA all the documents constituting the record of the matter on which the appeal was taken.

D. The hearing shall be held within 30 days of receipt of a complete application for the request for appeal. The hearing shall be held by the ZBA and the ZBA shall deliberate on the appeal consistent with the criteria set forth in this Article. Notice shall be given according to Section 12.10 of this ordinance.

E. Votes required: A concurring vote of the majority of the ZBA shall be necessary to grant a variance or reverse any order, requirement, decision, or determination, of the administrative official or body, to decide in favor of the applicant on a matter upon which the ZBA is required to pass under the zoning ordinance, or to grant a variance in the zoning ordinance. The ZBA may:

1. Reverse or affirm, whole or in part, or modify the order, requirement, decision or determination and may issue or direct the issuance of a permit; or

2. Grant a variance.

F. The motion or minutes containing the decision of the ZBA shall include:

1. The decision;

2. The reasons for the decision;

3. The findings of fact upon which the reasons are based; and

4. Conditions of approval, if any. Such conditions shall be:

    c. Designed to protect natural resources, the health, safety, and welfare and the social and economic well-being of the public;

    d. Related to a valid exercise of the police power; and

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e. Necessary to meet the intent and purpose of the zoning ordinance, related to the standards established in this Ordinance for the land use or activity under consideration, and necessary to ensure compliance with such standards.

G. If a variance is approved with conditions, a performance guarantee, as provided for in Section 12.7, may be required to be deposited with the Clerk.

H. The decision of the ZBA is final. All decisions shall be in writing and given to the applicant.

11.6 STANDARDS FOR NONUSE VARIANCES AND APPEALS

Variances, appeals, exceptions and expansions shall be granted only in accordance with the Michigan Zoning Enabling Act and based on the findings set forth in this Section. The extent to which the following criteria apply to a specific case shall be determined by the ZBA, and where applicable the ZBA shall find that all criteria have been met to approve a nonuse variance or appeal.

A. Criteria Applicable to Nonuse Variances

1. Practical Difficulties: Compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, or other dimensional provisions would create practical difficulties, unreasonably prevent the use of the property for a permitted purpose or render conformity with such restrictions unnecessarily burdensome. The showing of mere inconvenience is insufficient to justify a variance.

2. Substantial Justice: Granting of a requested variance or appeal would do substantial justice to the applicant as well as to other property owners in the district; or, as an alternative, granting of lesser variance than requested would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

3. Public Safety and Welfare: The requested variance or appeal can be granted in such fashion that the spirit of these regulations will be observed and public safety and welfare secured.

4. Extraordinary Circumstances: There are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties or other similar uses in the same zoning district. The conditions resulting in a variance request cannot be self-created.

5. No Safety Hazard or Nuisance: The granting of a variance or appeal will not increase the hazard of fire or otherwise endanger public safety or create a public nuisance.

6. Relationship to Adjacent Land Uses: The development permitted upon granting of a variance shall relate harmoniously in a physical and economic sense with adjacent land uses and will not alter the essential character of the neighborhood. In evaluating this criterion, consideration shall be given to prevailing shopping patterns, convenience of access for patrons, continuity of development, and the need for particular services and facilities in specific areas of the Village.

B. Criteria Applicable to Appeals.

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1. The ZBA shall reverse an administrative decision or order of the officer or body from which an appeal is taken only if it finds that the action or decision appealed:

    a. Was arbitrary or capricious, or

    b. was based on an erroneous finding of a material fact, or

    c. constituted an abuse of discretion, or

    d. was based on erroneous interpretation of the Zoning Ordinance or zoning law.

C.

11.7 RULES OF PROCEDURE

The ZBA may adopt additional rules and regulations to ensure proper conduct of its meetings.

11.8 EXPIRATION OF ORDER

No order of the ZBA permitting a use of a building or premises shall be valid for a period longer than 1 year from the date of the approval of the minutes from the meeting that the ZBA approved the appeal or variance unless such use is established within such period; provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for said erection or alteration is obtained within such period, and such erection or alteration is started and completed in accordance with the terms of such permit. An extension may be granted for up to 1 year if the extension request is submitted to the ZBA prior to the expiration of the order.

11.9 APPEAL OF ZBA DECISION

Any party aggrieved by a decision of the ZBA may appeal to the Benzie County Circuit Court as provided in the Michigan Zoning Enabling Act. An appeal under this section shall be filed as required in the Michigan Zoning Enabling Act.

11.10 STAY OF PROCEEDINGS

An administrative appeal to the ZBA and an appeal of a decision by the ZBA to circuit court stays all proceedings of the action appealed from, including the effectiveness of any zoning permit issued, unless the body or officer from which the appeal is taken certifies to the ZBA after such appeal has been filed that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed, unless ordered stayed by the ZBA or the circuit court. However, this section shall not apply to an administrative decision to take enforcement action for alleged violations of this Ordinance.

11.11 LIMITATIONS OF AUTHORITY

A. No order of the ZBA permitting the erection or alteration of a structure shall be valid for a period longer than one (1) year from the date of the approval of the minutes from the meeting that the ZBA approved the appeal or variance unless a building permit for such erection or alteration is obtained within such

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period and such erection or alteration is started and completed in accordance with the terms of such permit.

B. The ZBA shall consider appeals of any decisions by the Planning Commission.

C. The ZBA shall not have the authority to alter this Zoning Ordinance or Zoning Map.

Commented [JC32]: Is this normal? Discuss w Sara.

Commented [NE33]: Does the Village want the ZBA to hear these types of appeals? Generally, we advise to have PC decisions as a final decisions and the appeal process would then go to the Circuit Court.

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ARTICLE 12: ADMINISTRATION, ENFORCEMENT & VIOLATIONS

12.1 ADMINISTRATION

The provisions of this Ordinance shall be administered by the Village Council in accordance with the Michigan Zoning Enabling Act.

12.2 ZONING ADMINISTRATOR

A Zoning Administrator shall be appointed by and on such terms as determined by The Village Council. The Zoning Administrator shall administer and enforce this Ordinance, including the receiving and processing of applications for permits under this Ordinance, and appeals for variances or other matters the Zoning Board of Appeals (ZBA) or Planning Commission is required to decide. The Administrator shall also be responsible for the inspection of premises, the issuance of permits and institution of proceedings for the enforcement of the provisions of this Zoning Ordinance. The Village Council may also appoint a Deputy Zoning Administrator.

The Zoning Administrator shall have the following duties and powers.

A. The Zoning Administrator shall make determinations on all provisions of this Ordinance.

B. The Zoning Administrator shall enforce all provisions of this Ordinance and shall issue all necessary notices or orders to ensure compliance with said provisions.

C. The Zoning Administrator shall receive applications for and issue permits when all the provisions of this Ordinance have been met.

D. The Zoning Administrator shall make all investigations and inspections required by this Ordinance, and all investigations and inspections necessary to enforce this Ordinance and may engage the assistance of the Fire Chief as deemed necessary in making such inspections. The Zoning Administrator may engage other expert opinions to assist in making such inspections subject to the approval of The Village Council.

E. The Zoning Administrator shall identify and process violations to this Ordinance. The Zoning Administrator shall be responsible for making periodic inspection of the Village or parts thereof for the purpose of finding violations of this Ordinance.

F. The Zoning Administrator shall keep official records of applications received, permits issued, fees collected, reports of inspections, and notices and orders issued.

G. The Zoning Administrator shall serve in an advisory role to the Planning Commission, the ZBA, and The Village Council. The Zoning Administrator shall periodically or more, as necessary, attend Planning Commission, the ZBA and Council meetings, and report on the status of zoning operations and any needed changes to this Ordinance. The Zoning Administrator shall also make recommendations concerning permit fee structures and zoning forms and propose solutions to any problems encountered in administering this Ordinance.

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H. Before the ZBA, the Zoning Administrator shall present case facts and explain decisions of the Zoning Administrator.

I. The Zoning Administrator shall identify, inventory, and monitor nonconforming uses.

12.3 LAND USE PERMITS AND PERMIT PROCESS

A. No person shall erect, alter, demolish, or move a structure or establish a new use or change in use for any parcel without a land use permit.

B. Applications for permits shall be made to the Zoning Administrator on a form provided by the Village Council with an affidavit swearing to the information in the application, granting right of entry, and acknowledging that the application does not grant the applicant any rights.

C. The applicant shall furnish permits, approvals, or evidence of assurances of approvals from the Benzie County Environmental Health Department, the Benzie County Road Commission, the Michigan Department of Transportation, the Michigan Department of Environmental Quality and any other regulatory agency with authority over the activity or use, if required, before the Zoning Administrator may issue a permit.

Commented [JC34]: Proof of current property taxes paid?

D. Evidence of Ownership. Application for a land use permit may be made by the owner or lessee of the structure or lot, or agent of either, or by the licensed engineer or architect employed in connection with the proposed work or operation. If the application is made by a person other than the owner, it shall be accompanied by a duly verified affidavit of the owner or the qualified person making the application that the proposed work or operation is authorized by the owner and that the applicant is authorized to make such application. The full names and addresses of the owner, lessee, applicant, and of the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.

E. Amendments. Amendments to a plan, application, or other records accompanying the same may be filed at any time before completion of the work for which the permit is issued. Such amendments shall be deemed part of the original application and shall be filed therewith. A fee may be assessed for review and approval of amendments as established by the Village Council.

F. Review, Rejection, Approval. The Zoning Administrator shall examine or cause to be examined all applications for a land use permit and amendments thereto within 15 business days after filing. If the application or the plans do not conform to all requirements of this Ordinance, the Zoning Administrator shall reject such application in writing and state the reasons therefore. If the application or plans do conform, the Zoning Administrator shall issue a permit therefore as soon as possible. The Zoning Administrator shall attach his/her signature to every permit or may authorize a subordinate to affix such signature thereto.

G. Revocation. The Zoning Administrator may revoke a land use permit in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit was based.

H. Conditions. Issuance of a land use permit shall be subject to the following conditions:

1. No permit shall be issued until the required fees have been paid.

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2. All work or use shall conform to the approved application and plans for which the permit has been issued and any approved amendments thereto.

3. All work or use shall conform to the approved final site plan, if required.

I. Plot Plan. An application for a land use permit shall be accompanied either by 2 copies of a plot plan as required in this Section, or by a site plan as required under Article 7, whichever applies. Such plot plan shall be drawn to scale and shall provide the following information:

1. Scale, date and north arrow;

2. Location, shape and dimensions of the lot;

3. Dimensioned location, outline, and dimensions of all existing and proposed structures and the location and extent of all uses not involving structures;

4. Clear description of existing and intended uses of all structures; and

5. Additional information as required by the Zoning Administrator for purposes of determining compliance with this Ordinance.

J. Waiver of Plot Plan Requirements. The Zoning Administrator may waive portions of the foregoing requirements not necessary for determination of compliance with this Ordinance.

K. Posting. Any land use permit required by this Zoning Ordinance shall be displayed face out, within 24 hours of its issuance by placing the same in a conspicuous place on the premises facing the nearest street and shall be displayed continuously so until all work is completed.

L. Inspection. The Village may inspect the property at any time during an open permit to ensure compliance with the approved permit.

M. Moving of Structures:

1. The moving of a structure shall be considered the erection of a new structure. All provisions relative to the erection of new structures shall be met. The Zoning Administrator may require a performance guarantee as described in §12.7 of this Ordinance prior to such moving.

Commented [JC35]: From edge of eave or exterior wall? Discuss w Josh.

12.4 ABANDONMENT

An application for land use approval including any building or zoning permit application, site plan review application, special land use permit application, variance application, or other land use application shall be deemed to have been abandoned 6 months after the date of filing unless such application has been diligently pursued. The Zoning Administrator may, for reasonable cause, grant one or more extensions of time for additional periods not exceeding 90 days each.

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12.5 EXPIRATION OF APPLICATION

During the course of any application review, if an applicant has failed to proceed meaningfully toward application completion or application decision for a period of one-hundred and twenty (120) consecutive calendar days, then the application shall be considered abandoned and expire. If the applicant would like to proceed following the one-hundred and twenty (120) days, a new application, documentation, and fee shall be required. This shall be processed as a new application.

12.6 APPLICATION FEES AND POSTING OF PERFORMANCE GUARANTEES

To assist in defraying the costs of investigating, reviewing, and administering zoning applications, appeals, rezoning requests from individual property owners, and other types of decisions which result in extra costs to the Village, The Village Council may from time to time adopt by resolution a fee schedule establishing basic zoning fees.

The amount of these zoning fees shall cover the costs associated with the review of the application or appeal, including but not limited to the costs associated with conducting public hearings, publishing notices in the newspaper, sending required notices to property owners, postage, photocopying, mileage, time spent by zoning staff, time spent by the members of the Planning Commission and/or ZBA, cost of professional services, and cost to establish a legal fund. The basic zoning fees shall be paid before any application required under this Ordinance is processed. The basic zoning fees are non-refundable, even when the applicant withdraws an application or appeal.

12.7 PERFORMANCE GUARANTEE

The Village may require a surety bond, irrevocable bank letter of credit, certified check or cash deposit in an amount acceptable to the Village to cover the estimated costs of the improvements. Such performance guarantee shall be deposited with the Clerk at the time of the issuance of the permit authorizing the activity or project to ensure faithful completion of the improvements indicated with the approved site plan. The Village shall rebate a proportional share of cash deposits only when requested by the depositor, based on the percent of improvement completed, as attested to by the depositor and verified by the Zoning Administrator. In cases where provisions of this Ordinance have not been met, the amount of the aforementioned performance guarantee shall be forfeited and used by the Village to complete the required improvements, and the balance, if any, shall be returned to the Applicant.

12.8 ESCROW POLICY

In connection with any application, potential application, or any other time when outside assistance is required or anticipated to be needed for a specific person, property, or project, the Village shall require the applicant to pay in advance into an escrow fund established to cover reasonable costs. These costs may include staff costs or consultant fees for professional and technical services required for a proper and thorough review of the application.

The Zoning Administrator may waive the requirement of establishing an escrow account when the matter to be considered does not contain issues that require the use of one or more professional consultants that are reasonably required before, during or after a final decision. However, if issues arise at any time regarding which

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the use of one or more consultants will be reasonably required before, during or after a final decision, the Zoning Administrator shall require that an escrow fund be established.

No application shall be considered complete until all costs have been paid and/or the escrow fund has been replenished as outlined below. The Village Clerk shall refund any unexpended funds within sixty (60) days of final action.

Should the escrow fund ever dip below fifty (50) percent of the original fund amount, the applicant shall be advised and required to replenish said escrow fund to the full original amount within five (5) business days of having been so notified by the Village Clerk. If it is determined that more money than the initial deposit is necessary, the Village Clerk shall notify the applicant and the applicant shall deposit within five (5) business days. The failure of the applicant to either initially fund or replenish the escrow fund shall render the application incomplete and ineligible for further consideration until the escrow fund is replenished as required.

The applicant may seek an accounting from the Village Clerk of expenditures from the escrow fund when a request is made by the Village to replenish the fund and after a final decision on the application has been made. The applicant has no authority to approve or deny any required expenditures.

12.9 REHEARING PROCESS

A. The Planning Commission or ZBA may grant a rehearing under exceptional circumstances for any decision made by it. Exceptional circumstances shall mean any of the following:

    1. The applicant who brought the matter before the Planning Commission or ZBA made misrepresentations concerning a material issue which was relied upon by the Planning Commission or ZBA in reaching its decision.

    2. There has been a material change in circumstances regarding the Planning Commission or ZBA findings of fact which occurred after the public hearing.

    3. Legal counsel selected by The Village Council issues a written opinion which states that in the attorney's professional opinion the decision made by the Planning Commission or ZBA or the procedure used in the matter was clearly erroneous.

B. A rehearing may be requested by the applicant or by the Zoning Administrator, or a rehearing may be granted by the Planning Commission or ZBA on its own motion, pursuant to the following procedure:

    1. A request for a rehearing that is made by an applicant must be made within 21 days from the date of decision on the permit application by the Planning Commission or ZBA regarding the decision for which the rehearing is being requested.

    2. A request for a rehearing made by the Zoning Administrator or a rehearing granted by the Planning Commission or ZBA on its own motion may be granted at any time as long as the applicant has not been prejudiced by any delay.

    3. Whenever the Planning Commission or ZBA considers granting a rehearing, it shall provide written notice consistent with Section 12.10.

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4. If the Planning Commission or ZBA grants a rehearing, then the rehearing on the merits shall not be held until all notice requirements of Section 12.10 are met.

12.10 PUBLIC HEARINGS: NOTICE & PROCEDURE

A. Public Notification. All applications for development approval requiring a public hearing shall comply with the Michigan Zoning Enabling Act and the other provisions of this Section with regard to public notification.

B. Responsibility. When the provisions of this Ordinance or the Michigan Zoning Enabling Act require that notice be published, the Clerk, with the assistance of the Zoning Administrator, shall be responsible for preparing the content of the notice, having it published in a newspaper of general circulation in the Village of Elberta, and mailed or delivered as provided in this Section.

C. Content. All mail, personal and newspaper notices for public hearings shall:

1. Describe the nature of the request. Identify whether the request is for a rezoning, text amendment, special land use, planned unit development, variance, appeal, ordinance interpretation or other purpose.

2. Location. Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the subject property. Street addresses do not need to be created and listed if no such addresses currently exists within the property. If there are no street addresses, other means of identification may be used such as a tax parcel identification number, identifying the nearest cross street, or including a map showing the location of the property. No street addresses must be listed when 11 or more adjacent properties are proposed for a zoning amendment, or rezoning, or when the request is for an ordinance interpretation not involving a specific property.

3. When and where the request will be considered. Indicate the date, time and place of the public hearing(s).

4. Written comments. Include a statement describing when and where written comments will be received concerning the request. Include a statement that the public may appear at the public hearing in person or by counsel.

5. Handicap access. Information concerning how handicap access will be accommodated if the meeting facility is not handicap accessible.

D. Public Personal and Mailed Notice

1. General. When the provisions of this Ordinance or state law require that personal or mailed notice be provided, notice shall be provided to:

a. The owners of property that is the subject of the request, and the applicant, if different than the owner(s) of the property.

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b. Except for a zoning amendment or rezoning requests involving 11 or more adjacent properties or an ordinance interpretation request that does not involve a specific property, to all persons to whom real property is assessed within 300 feet of the boundary of the property subject to the request and one occupant of all structures within 300 feet of the boundary of the property subject to the request, regardless of whether the property or occupant is located within the boundaries of the Village of Elberta. If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than 1 occupant of a structure, except that if a structure contains more than 1 dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses, or organizations, 1 occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than 4 dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.

c. All neighborhood organizations, public utility companies, railroads and other persons which have requested to receive notice pursuant to Section 12.10.

2. Notice by mail/affidavit. Notice shall be deemed mailed by its deposit during normal business hours for delivery by the United States postal service or other public or private delivery service. The Clerk shall prepare a list of property owners and registrants to whom notice was mailed or otherwise delivered by public or private delivery service, as well as of anyone to whom personal notice was delivered.

E. Timing of Notice. Unless otherwise provided in the Michigan Zoning Enabling Act or this Ordinance where applicable, notice for public hearing shall be provided as follows:

1. For a public hearing on an application for a rezoning, text amendment, special land use, planned unit development, variance, appeal, or ordinance interpretation: not less than 15 days before the date the application will be considered for approval. Thus, such notice shall be published in a newspaper of general circulation and for those receiving personal notice, deposited for delivery or personally delivered, not less than 15 days before the hearing.

2. For any other public hearing required by this Ordinance, such timing for notice of the public hearing shall be as provided in the applicable provision.

F. Registration to Receive Notice by Mail.

1. General. Any neighborhood organization, public utility company, railroad or any other person may register with the Clerk to receive written notice of all applications for development pursuant to Section 12.10.D.1.c. The Clerk shall be responsible for providing this notification. Fees may be assessed for the provision of this notice, as established by The Village Council.

2. Requirements. The requesting party must provide the Clerk information on an official form proscribed by The Village Council to ensure notification can be made. All registered persons must re-register annually to continue to receive notification pursuant to this Section.

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12.11 VIOLATIONS & PENALTIES

A. It shall be the responsibility of the Zoning Administrator to initiate the procedure for removing or abating a violation of the Zoning Ordinance. Upon verification that a Zoning Ordinance violation exists, the Zoning Administrator shall either:

1. Give notice of violation by mail or in person to the property owner and the property possessor/occupant (if any). Such notice shall identify the subject property, identify the nature of the violation and the applicable parts of the Zoning Ordinance, direct the discontinuance of the violation, and specify the time period, which will be allowed for abatement of the violation. Or,

2. Issue a "Stop Work Order" if any one of the following apply:

    a. The applicable permit or approval required under this Ordinance has not been issued.

    b. Work in progress does not comply with the applicable permit or approval granted under this Ordinance.

    c. A permittee fails to comply with any of the terms, conditions, or requirements of the applicable land use permit or a condition of the permit.

    d. A permittee fails to pay any fees required by this Ordinance or any other applicable ordinance.

3. If a stop work order is used, the stop work order shall contain the same information required for the notice of violation (paragraph 1. above). In addition, the stop work order shall contain the time of day that the order is issued, shall order all persons to stop work immediately, and shall state that failure to comply with the order or removal of the posted order may result in criminal prosecution. A copy of the order shall be posted on the property at a point visible from the street and shall be of a distinctive bright color:

B. The Zoning Administrator shall cancel a notice of violation or remove and cancel a stop work order when his/her reinspection confirms that the violation originally cited has been abated and that no new violation exists. A copy of the cancellation will be mailed or hand delivered to the property owner and the occupant if different from the owner.

C. If the violation is not abated or work continues after posting of the stop work order, the Zoning Administrator is authorized to issue a municipal civil infraction violation notice pursuant to the Village's Ordinance governing municipal civil infractions. Any person who violates any provision of this section shall be responsible for a municipal civil infraction, subject to payment of a civil fine as set forth in the Ordinance.

D. Nuisance Per Se. Any land, dwelling, building or structure which is erected, altered, demolished or converted, or any use of any land, dwelling, building or structure which is commenced or changed after the effective date of this Ordinance, in violation of any of the provisions herein, is declared to be a public nuisance per se, and may be abated by order of any court of competent jurisdiction. In addition to

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other remedies, the Village shall have the right to commence a civil action in a court of competent jurisdiction to obtain injunctive or other relief that may be appropriate to stop, correct, or otherwise remedy a nuisance per se.

E. Penalties.

1. Any person, partnership, corporation, or association who creates or maintains a nuisance per se or who violates or fails to comply with this Ordinance or any permit issued pursuant to this Ordinance shall be responsible for a municipal civil infraction as defined in the Revised Judicature Act of 1961, as amended, being MCL 600.101 *et seq*, and shall be subject to a fine of not more than five hundred dollars ($500). Every day that such violation continues shall constitute a separate and distinct offense under the provisions of this Ordinance. Nothing in this section shall exempt the offender from compliance with the provisions of this Ordinance.

2. The Zoning Administrator, or another person appointed by the Village Council, is hereby designated as the authorized Village official to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.

3. In addition to enforcing this Ordinance, as a municipal civil infraction, the Village may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this Ordinance.

Commented [JC37]: Does the VC want to establish other fines for more serious violations?

Commented [JC38]: Is there a resolution or PP ordinance that establishes the Ordinance Enforcement Officer?

12.12 Temporary MORATORIUM

A. The Planning Commission has the authority to recommend the establishment of a temporary moratorium as to the application of provisions of the Zoning Ordinance to the Village Council, by majority vote of the Planning Commission.

B. The Village Council may impose a temporary moratorium as to the application of the provisions of the Zoning Ordinance by adoption of an ordinance.

C. A temporary moratorium may be extended by the Village Council to allow additional time for Village review and consideration of any application, revision, review or repeal/replacement of zoning ordinance provisions.

D. Any such moratorium may be imposed only under the following conditions:

1. The Village Council finds, based on facts appearing in the public record before it, that such a moratorium is necessary to protect the public health, safety and welfare and that no other action short of imposing a moratorium can adequately protect the public health, safety and welfare;

2. The moratorium is for a limited period of time, not to exceed 6 months, but may be extended for no more than 1 additional 6-month period upon new and separate findings of fact required under subsection 1 above;

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3. The moratorium is limited in its scope and area of application so as to only affect those matters and that area necessary to protect the public health, safety and welfare;

4. The ordinance declaring the moratorium shall be published in a newspaper of general circulation within the Village;

5. The ordinance declaring the moratorium shall specify the effective date of such moratorium which may be the date of publication or another date following such publication; and

6. The ordinance declaring the moratorium shall be adopted by a super majority (2/3 majority) vote.

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ARTICLE 13: AMENDMENTS & SEVERABILITY

13.1 AMENDMENTS

The Village Council may, after recommendation from the Planning Commission, amend, supplement or change the provisions of this Ordinance or Official Zoning Map. Such actions shall be consistent with the Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended, and the provisions of this section.

Amendments or supplements to this Zoning Ordinance may be made from time to time in the manner provided by law.

The regulations and provisions stated in the text of this Ordinance and the boundaries of zoning districts shown on the zoning map may be amended, supplemented or changed by ordinance of The Village Council.

13.2 INITIATION OF AMENDMENT

The Planning Commission may initiate proposals for amendments, supplements or changes on its own motion or by petition of 1 or more members of the property to be affected by the proposed amendment.

13.3 APPLICATION

An amendment to this Ordinance (except those initiated by the Village Council, Planning Commission or Zoning Administrator) shall be initiated by submission of a complete and accurate application to the Village on a standard form, along with the required fee established by Village Council to cover administrative and publication costs. In the case of an amendment to the official Zoning Map, the following information shall accompany the application and fee:

A. A legal description and street address of the subject property, together with a survey and location map identifying the subject property in relation to surrounding properties.

B. The name and address of the owner of the subject property, and a statement of the applicant's interest in the subject property, if not the owner in fee simple title.

C. The existing and proposed zoning district designation of the subject property and surrounding properties.

D. A written description of how the requested amendment meets the criteria stated in this Section.

13.4 AMENDMENT REVIEW PROCEDURE

A. Proposed amendments to this Ordinance or Official Zoning Map shall be reviewed in accordance with the following procedure:

    1. Completeness Review: Upon receipt of an application to amend this Ordinance, the Zoning Administrator shall review the application to confirm all required material has been submitted. The Zoning Administrator shall notify the applicant of any outstanding items.

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2. Technical Review: Prior to Planning Commission consideration, the proposed amendment and application materials shall be distributed to appropriate Village officials for review and comment. The Zoning Administrator may also submit the application materials to designated Village consultants for review.

3. Planning Commission Review. The Planning Commission shall consider each proposal for amendment in terms of its own judgment on particular factors related to the individual proposal, in terms of the most likely effect on the community's physical development, and for compliance with adopted village plans using the standards for review and any other competent material.

4. Public Hearing: A public hearing shall be held for all proposed amendments in accordance with the procedures in Article 12.

5. Following such hearing, the Planning Commission shall consider the testimony taken at the public hearing and its own findings using the Standards for Review, below, and shall make a recommendation to the Village Council. The Planning Commission may recommend any additions or modifications to the original amendment proposal.

6. Village Council Review. The Village Clerk shall forward a copy of the proposed amendment and report and recommendation from the Planning Commission to the Village Council for consideration and final action.

7. The Village Council may adopt, amend, or reject the proposed amendment or may refer the amendment back to the Planning Commission for revision or further consideration. Following adoption, the Village Clerk shall publish a notice of adoption in accordance with the Michigan Zoning Enable Act.

8. The Village Council may, at its discretion, hold additional public hearings on the proposed amendment following the procedures in Article 12.

9. No application for a rezoning which has been denied by The Village Council shall be resubmitted for a period of 1 year from the date of the last denial, except on grounds of newly discovered evidence or proof of changed conditions found upon inspection by The Village Council to be valid. A rehearing on the permit may be made in accordance with Section 12.9.

B. Standards for Review

Subsequent to a required public hearing, the Planning Commission shall review the proposed amendment, together with any reports and recommendations from staff, consultants, other reviewing agencies, and any public comments. The Planning Commission shall identify and evaluate all relevant factors and shall report its findings and recommendation to the Village Council. In considering an amendment to the Official Zoning Map (rezoning), the Planning Commission shall consider the following factors in making its findings and recommendations:

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1. Consistency with the Master Plan's goals, policies, and future land use map, including planned timing or sequence of development. If conditions have changed since the Master Plan was adopted, the consistency with recent development trends in the area shall be considered.

2. Compatibility of all the potential uses allowed in the proposed zoning district(s) with the site's physical, geological, hydrological, and other environmental features.

3. Compatibility of all the potential uses allowed in the proposed district(s) with surrounding uses and zoning in terms of suitability, intensity, traffic impacts, aesthetics, infrastructure, and potential influence on property values.

4. Determination of whether the property is capable of being used for a use already permitted within the district.

5. Determination of whether the proposed use is reasonable within the district in which it is proposed.

6. Capacity of available utilities and public services to accommodate the uses permitted in the district(s) without compromising the health, safety, and welfare of Village residents or burdening the Village or Elberta or Benzie County with unplanned capital improvement costs or other unplanned public expenses.

7. Capability of the road system to safely and efficiently accommodate the expected traffic generated by uses permitted in the zoning district(s).

8. The apparent demand for the types of uses permitted in the district(s) in relation to the amount of land currently zoned and available in the Village and surrounding communities to accommodate the demand.

9. The boundaries of the proposed district(s) in relationship to the surrounding area and the scale of future development on the site.

10. The requested rezoning will not create an isolated or incompatible zone in the neighborhood.

11. Whether the proposed zoning promotes the Village's interests related to public health, safety and welfare.

12. Other factors deemed appropriate by the Planning Commission and Village Council.

13.5 SEVERABILITY

Sections and subsections of this Ordinance shall be deemed to be severable, and should any section, paragraph, or provision thereof be declared by the courts to be unconstitutional or invalid, such holdings shall not affect the validity of this Ordinance as a whole or any other part thereof, other than the part so declared to be unconstitutional or invalid. If any court shall declare invalid the application of any provision of this Ordinance to a particular parcel, lot use, building, or structure, such ruling shall not affect the application of said provision to any other parcel, lot use, building, or structure not specifically included in said ruling.

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13.6 REPEAL AND SAVING CLAUSE

A. This Ordinance repeals and replaces the Village of Elberta Zoning Ordinance adopted May 5, 1994, as amended, and any other previous Village of Elberta Zoning Ordinance in its entirety.

B. The repeal of the Village of Elberta Zoning Ordinance adopted May 5, 1994, as amended, and any other previous Village of Elberta Zoning Ordinance, as provided, shall not affect or impair any act done, offense committed or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment incurred prior to the time enforced, prosecuted, or inflicted. Said Ordinance or Ordinance sections repealed is hereby continued in force and effect after the passage, approval, and publication of this Ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities, and actions therefore.

13.7 EFFECTIVE DATE

A. This Ordinance was adopted on _____ by the Village of Elberta Village Council and will be effective on _____. The foregoing Zoning Ordinance and Zoning Map were presented at a public hearing before the Planning Commission on _____.

B. Amendments or revision to this Ordinance or Map of Zoning Districts shall become effective on the expiration of seven (7) days or at a later date specified by the Village Council after publication of a notice of adoption of said amendments or revisions within fifteen (15) days of adoption in accordance with Section 401 of Michigan Zoning Enabling Act, 2006 PA 110, as amended.

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ARTICLE 14: DEFINITIONS

14.1 RULES APPLYING TO THE TEXT

1. The particular shall control the general.

2. With the exception of this Article, the headings which title an article, section or subsection are for convenience only and are not to be considered in any way construed as an interpretation of this Ordinance or as enlarging or restricting the terms and provisions of this Ordinance in any respect.

3. The word "shall" is always mandatory and not discretionary. The word "may" is permissive.

4. Unless the context clearly indicates to the contrary, (1) words used in the present tense shall include the future tense; (2) words used in the singular number shall include the plural number; and (3) words used in the plural number shall include the singular number.

5. A "building" or "structure" includes any part thereof.

6. The word "person" includes a firm, association, partnership, joint venture, corporation, trust, or equivalent entity or a combination of any of them as well as a natural person.

7. The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended," "arranged," "designed to use," "be used" or "occupied."

8. Any word or term not defined herein shall be considered to be defined in accordance with its common or standard definition.

14.2 TERMS

Whenever used in this Zoning Ordinance, the following words and phrases shall have the meaning ascribed to them in this Article.

14.2.1 "A" Terms

ACCESS: Any driveway, street, easement, right-of-way, or other means of providing for the movement of vehicles to and from a property.

ACCESSORY DWELLING: A secondary dwelling unit contained within a single-family dwelling, above a garage, or a separate structure on the same lot as and subordinate to a single-family detached dwelling for use as complete, independent living quarters for a person or family, with provision for living, sleeping, bathing and cooking.

ACCESSORY DWELLING, JUNIOR: A secondary dwelling unit that is subordinate to the primary dwelling created within an existing room(s) of a one-family detached dwelling such as a bedroom or attached

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garage with provision for living, sleeping, bathing and cooking. A full kitchen is not required, and the unit may share a bathroom with the primary dwelling.

ACCESSORY USE OR STRUCTURE: A use or a building or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal or main use, building or structure, which shall include but not be limited to playground equipment, sport courts, children's playhouses, dog houses and similar pet accommodations, fallout shelters, swimming pools, sheds and gazebos, and which shall not include fences, hunting blinds, or signs.

ADULT DAY CARE FACILITY. The following definitions shall apply to types of adult day care facilities:

A. ADULT DAY CARE CENTER: A facility, other than a private residence, receiving one or more persons, eighteen (18) years of age or older, for care for periods of less than twenty-four (24) hours a day. It includes facilities for adults who are aged, mentally ill, developmentally disabled or physically handicapped who require supervision on an ongoing basis. An adult day-care center does not include alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional facility, or any other facilities which do not meet the definition of adult day-care center.

B. ADULT GROUP DAY CARE HOME: A private residence in which more than six (6) but not more than twelve (12) adults eighteen (18) years of age or older, receive care for periods of less than twenty-four (24) hours a day. It includes facilities for adults who are aged, mentally ill, developmentally disabled, or physically handicapped that require supervision on an ongoing basis. An adult day care home does not include alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional facility, or any other facilities which do not meet the definition of adult day care center.

C. ADULT FAMILY DAY CARE HOME: A private residence in which six (6) or less adults eighteen (18) years of age or older, receive care for periods of less than twenty-four (24) hours a day. It includes facilities for adults who are aged, mentally ill, developmentally disabled, or physically handicapped that require supervision on an ongoing basis. An adult day care home does not include alcohol or substance abuse rehabilitation centers, residential centers for persons released from or assigned to a correctional facility, or any other facilities which do not meet the definition of adult day care center.

D. ADULT FOSTER CARE FACILITY: A state licensed establishment that provides care to adults. Subject to Michigan Public Act 218 of 1979, as amended, Adult Foster Care includes facilities and homes or facilities for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis, but who do not require continuous nursing care. An adult foster care facility does not include convalescent or nursing homes, homes for the aged, hospitals, alcohol or substance abuse rehabilitation center, residential centers for persons released from or assigned to a correctional facility, or any other facilities which have been exempted from the definition of adult foster care facility by the Adult Foster Care Facility Licensing Act. The following definitions shall apply to types of adult foster care facilities:

    1. *Adult foster care home, small group.* An adult foster care facility providing residency with the approved capacity to receive at least three (3) but not more than twelve (12) adults to be provided with foster care.

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2. *Adult foster care home, large group.* An adult foster care facility with the approved capacity to receive at least 13 but not more than 20 adults to be provided with foster care.

3. *Adult foster care home, family.* A private residence with the approved capacity to receive at least 3 but not more than 6 adults to be provided with foster care. The adult foster care family home licensee must be a member of the household and an occupant of the residence.

4. *Adult foster care congregate facility.* An adult foster care facility with the approved capacity to receive more than twenty (20) adults to be provided with foster care.

5. *Adult foster care camp* or *adult camp* means an adult foster care facility with the approved capacity to receive more than 4 adults to be provided foster care. An adult foster care camp is a facility located in a natural or rural environment.

AGRICULTURAL EMPLOYEE HOUSING: A residential use accessory to an established agricultural operation intended to provide temporary housing for employees of the agricultural operation and their families.

ALTER OR ALTERATION: Any modification, additions or changes in construction or type of occupancy, any change or rearrangement in the structural parts of a building, any enlargement of a building, or the moving of a building from one location to another.

ANTENNA: An exterior transmitting or receiving device mounted on a tower, building, or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication structures.

APARTMENT. An independent, self-contained unit with one or more rooms, having a private bath(s) and private kitchen facilities, used for residential purposes in a building containing three (3) or more said units.

ARCHITECTURAL FEATURES: The components of construction, either permanent or temporary, that are an integrated part of a structure or attached to a structure and constitute a portion of the exterior design, including, but not limited to: arches, transoms, windows, moldings, columns, capitals, dentils, lintels, parapets, pilasters, sills, cornices, cupolas, awnings, and canopies.

ASSEMBLY FACILITY: A meeting place at which the public or membership groups are assembled regularly or occasionally, indoors or outdoors as a principal or accessory use, including but not limited to schools, religious institutions, theaters, auditoriums, funeral homes, stadiums, lecture halls, lodge rooms, conference rooms, convention centers, dining halls, and similar places of assembly

ASSISTED LIVING FACILITY: A structure providing housing and limited services such as nursing, recreation, and meals to individuals who are partially able to provide services to themselves.

ATTIC: The area located between the ceiling of the highest habitable floor and the roof of the structure.

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AUTOMOBILE: Every vehicle that is self-propelled.

AUTOMOBILE REPAIRS - MAJOR: General repair, rebuilding, or reconditioning of engines, motor vehicles, or trailers; collision service, including body frame or fender straightening or repair; overall painting or paint shop; vehicle steam cleaning and oil change. Automotive major repair also includes an establishment that provides for the removal and temporary storage (less than seven days) of vehicles, but does not include the disposal, permanent disassembly, or salvage, or the accessory storage of motor and/or recreational vehicles.

AUTOMOBILE REPAIRS - MINOR: The replacement of any part or repair of any part that does not require removal of the engine head or pan, engine transmission or differential; incidental body and fender work, minor painting and upholstering service. Above stated is applied to passenger automobiles and trucks not in excess of 7,000 pounds gross weight.

AUTOMOBILE SALES AND RENTALS: Storage and display for sale of more than two motor Torch vehicles or any type of trailer provided the trailer is unoccupied, and where repair or body work is incidental to the operation of the new or used vehicle sales. Motor vehicles sales includes motor vehicle retail or wholesale sales.

AUTOMOBILES SERVICE STATION: Any place where motor vehicle fuel is sold and dispensed as either a principal or incidental activity or where car washing services are sold. Where the sale and dispensing of vehicle fuel is the principal activity, accessory activities may include the retail sale of lubricants, tires, batteries, motor vehicle accessories and supplies, including minor installation services or repairs customarily incidental thereto, and sale of convenience goods, food and beverages.

14.2.2 "B" Terms

BASEMENT: That portion of a building below the first or ground-floor level and having less than four (4) feet of clearance from its ceiling to the average finished grade of the building perimeter. A basement shall not be considered a story for the purpose of determining building height. This definition shall include a cellar that may be below grade with an entrance separate from the principal building.

BED AND BREAKFAST ESTABLISHMENT: A use which is subordinate to the principal use of a dwelling unit as a single-family dwelling unit that is owner occupied where transient guests may rent a sleeping room in return for payment. Breakfast may be provided.

BEDROOM: A room designed or used in whole or part for sleeping purposes that has a window for emergency egress.

BERM: An earthen mound designed to provide visual interest on a site, screen undesirable views, reduce noise, or fulfill other such purposes.

BOARDING HOUSE: is a single-family dwelling in which the property owner rents rooms on a nightly basis and sometimes for extended periods of weeks, months, or years. The common parts of the house are maintained, and some services, such as laundry and cleaning, may be supplied. It normally provides "room and board," with some meals as well as accommodation.

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BOAT HOUSES: An enclosed structure designed for the use and storage of private boats and marine equipment.

BUILDING: Anything which is constructed or erected, temporarily or permanently, including a mobile home, having a roof, and used or built for the shelter or enclosure of persons, animals, chattel or property of any kind.

BUILDING AREA: The area of a lot that is defined by the minimum setback requirements within which building construction is permitted by the terms of this Ordinance.

BUILDING HEIGHT The vertical distance between the average ground surface elevation where a structure intersects finished grade and the highest point of a structure.

BUILDING HEIGHT, STORIES: The vertical distance measured as the number of individual floors in a building that can be occupied. Stories does not include basements or attics as defined in this Ordinance, permitted rooftop patios, or architectural features such as cupulas, steeple, etc.

BUILDING LINE: A line parallel to the front lot line at the minimum required front setback line.

BUILDING SETBACK:. (See Setback definition).

BUSINESS SERVICES: An establishment providing services to business establishments on a fee or contract basis, including but not limited to advertising services, business equipment and furniture sales or rental, or protective services. This term includes but is not limited to an employment agency, photocopy center, commercial photography studio, or mailing service. This term does not include maintenance, repair and office uses such as accounting, advertising, architectural design, urban planning, environmental analysis, insurance, interior design, investment, landscape design, law, management consulting, title research, and real estate.

14.2.3 "C" Terms

CAMPGROUND: Any parcel or tract or land upon which two (2) or more travel trailers, truck campers, tents or other similar portable units are placed, regardless of whether a charge is made thereof. The term also includes any building, structure, enclosure, driveway, equipment or facility used or designed and intended for use incidental to temporary living purposes in connection with the recreational pursuits for a limited amount of time.
CAMPSITE: Means the same as "site," as defined by the Administrative Rules for Part 125 of the Michigan Public Health Code.

CATERING SERVICES: An establishment in which the principal use is the preparation of food and meals on the premises, and where such food and meals are delivered to another location for consumption.

CEMETERY: Land used for the burial of the dead, including a columbarium, crematorium, and/or mausoleum.

Commented [JC41]: Missing as allowed use, allow in Industrial district w SUP.

CHANGE OF OCCUPANCY: The term "change of occupancy'' shall mean a discontinuance of an existing use or tenant and the substitution of a use of a different kind or class, or, the expansion of a use.

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CHILD CARE ORGANIZATION: A facility for the care of children , as licensed and regulated by the state under Public Act No. 116 of 1973 (MCL 722.111 et seq.) and the associated rules promulgated by the Michigan Department of Consumer and Industry Service. Such organizations shall be further defined as follows:

A. Child Care Center: a facility other than a private residence, receiving more than six preschool age or school age children for group care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. It includes a facility which provides care for not less than two consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, pay group, or drop-in center. Child care center or day care center does not include a Sunday School conducted by a religious institution or a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services.

B. Foster Family Home: a private home in which one but not more than four minor children, who are not related to an adult member of the household by blood, marriage, or adoption, are given care and super-vision for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent or legal guardian.

C. Foster Family Group Home: a private home in which more than four but less than seven children, who are not related to an adult member of the household by blood, marriage or adoption, are provided care for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent or legal guardian.

D. Family Child Care Home: a private home in which one but less than seven minor children are received for care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage or adoption. It includes a home that gives care to an unrelated child for more than four weeks during a calendar year.

E. Group Child Care Home: a private home in which more than six but not more than 12 children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. it includes a home that gives care to an unrelated child for more than four weeks during a calendar year.

CLERK: The Village of Elberta Clerk.

CLUB: A group of persons organized for the purposes of participating in and/or for the promulgation of sports, arts, sciences, literature, politics, or the like, but not operated for profit or to espouse beliefs or further activity that is not in conformance with the Constitution of the United States or any laws or ordinances. The facilities owned or used by such organization may be referred to as a “club” in this Ordinance.

CO-HOUSING: An intentional community that combines private homes with shared indoor and outdoor spaces designed to support an active and interdependent community life. Each resident has their own

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private dwelling, but they also share common facilities such as kitchens, dining areas, gardens, and recreational spaces. This arrangement encourages social interaction and collaboration among neighbors.

COLOCATE/COLOCATION: The location by 2 or more wireless telecommunication providers of wireless telecommunication facilities on a common structure, tower or building with the intent of reducing the overall number of structures required in the community.

COMMERCIAL RECREATION: Any establishment whose main purpose is to provide the general public with a sport or recreational activity and where tickets are sold or fees are collected for the activity, including but not limited to, skating rinks, miniature golf, driving ranges, arcades, bowling alleys, billiard halls, go-cart tracks, tennis clubs, and similar uses.

COMMERCIAL USE: The use of property for retail sales or similar businesses where goods or services are provided directly to the consumer. As used in these regulations, "commercial use" shall not include industrial, manufacturing, or wholesale businesses.

COMMERCIAL ZONING DISTRICTS: A zoning district primarily established for commercial land uses. Commercial zoning districts shall include those zoned Commercial.

COMMUNITY IMPACT STATEMENT: An assessment of the developmental, ecological, social, economic and physical impacts of the project on the natural environment and physical improvements on and surrounding the development site. This includes any impacts on existing or prospective future public services including, but not limited to, sewer, water, roads, storm drains, police, fire, other emergency services, and schools. Information required for compliance with other Village ordinances shall not be required to be duplicated in the Community Impact Statement.

CONDOMINIUM: A condominium is a system of separate ownership of individual units in multiunit projects according to PA 59 of 1978, as amended. In addition to the interest acquired in a particular unit, each unit owner is also a tenant in common in the underlying fee interest and in the spaces and building parts used in common by all the unit owners. For the purposes of this Ordinance, condominium terms shall be defined as follows:

A. Condominium Act: Shall mean Michigan PA 59 of 1978, as amended.

B. Condominium Lot: That portion of the land area of a site condominium project designed and intended to function similar to a platted subdivision lot for purposes of determining minimum yard setback requirements and other requirements set forth in the Dimensional Standards for each district of this Ordinance.

C. Condominium Subdivision Plan: Drawings and information that show the size, location, area, and boundaries of each condominium unit, building locations, the nature, location, and approximate size of common elements, and other information required by Section 66 of Condominium, as amended.

D. Condominium Unit: That portion of the condominium project designed and intended for separate ownership and use, as described in the master deed for the condominium project.

E. Common Elements: Portions of the condominium project other than the condominium units.

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F. Contractible Condominium: A condominium project from which any portion of the submitted land or buildings may be withdrawn pursuant to provisions in the condominium documents and in accordance with this Ordinance and the Condominium Act.

G. Conversion Condominium: A condominium project containing condominium units some or all of which were occupied before the establishment of the condominium project.

H. Convertible Area: A unit or a portion of the common elements of the condominium project referred to in the condominium documents within which additional condominium units or general or limited common elements may be created pursuant to provisions in the condominium documents and in accordance with this Ordinance and the Condominium Act.

I. Expandable Condominium: A condominium project to which additional land may be added pursuant to express provision in the condominium documents and in accordance with this Ordinance and the Condominium Act.

J. General Common Elements: Common elements other than the limited common elements, intended for the common use of all co-owners.

K. Limited Common Elements: Portions of the common elements reserved in the master deed for the exclusive use of less than all co-owners.

L. Master Deed: The condominium document recording the condominium project to which are attached as exhibits and incorporated by reference the bylaws for the project and the condominium subdivision plan.

M. Site Condominium Project: A condominium project designed to function in a similar manner, or as an alternative to a platted subdivision. A residential site condominium project shall be considered as equivalent to a platted subdivision for purposes of regulation in this Ordinance.

CONGREGATE HOUSING: A single-family dwelling or building where rooms and/or living areas are rented that includes a central dining facility where residents can access meals. This housing model is designed to support individuals, often seniors or those with disabilities, by providing communal living arrangements along with essential services.

CONTRACTOR ESTABLISHMENT: Establishments primarily engaged in retailing new building material and garden equipment and supplies from a fixed point-of-sale location. May include display equipment designed to handle lumber and related products and garden equipment and supplies kept either indoors or outdoors under covered areas. The staff is usually knowledgeable in the use of the specific products being retailed in the construction, repair, maintenance of the home and associated grounds.

CONVALESCENT HOME: See NURSING HOME

COTTAGE INDUSTRY: An occupation or trade conducted within a detached residential accessory structure, which is clearly incidental and secondary to the use of the lot, and dwelling for residential purposes.

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COUNCIL: The Village of Elberta Council.

CULTURAL INSTITUTION: A public or non-profit institution that engages in the cultural, intellectual, scientific, environmental, educational, or artistic enrichment of the community. Examples include, but are not limited to museums, libraries, historical societies, art galleries, botanical societies, land conservation organizations, performing art centers, scientific societies, and wildlife conservation societies. Cultural Institutions do not include any school or institution primarily engaged in religious or sectarian activities.

CURB CUT: The entrance to or exit from a property provided for vehicular traffic to or from a public or private thoroughfare.

CUSTOMARY AGRICULTURAL OPERATION: Agricultural operations that include general farming, truck gardening, fruit orchards, nursery greenhouses not selling at retail on the premises, and the usual farm buildings.

14.2.4 "D" Terms

DECK: An open, unroofed porch or platform, either free standing or extending from a house or other building.

DETENTION BASIN: A man-made or natural water collector facility designed to collect surface water in order to impede its flow and to release the water gradually at a rate not greater than that prior to the development of the property, onto natural or man-made outlets. Also referred to as a retention basin.

DEVELOPMENT: The construction of a new building, reconstruction of an existing building, or improvement of a structure on a parcel or lot, the relocation of an existing building to another lot, or the improvement of open land for a new use.

DENSITY: The number of dwelling units developed or to be developed per net acre of land.

DISTRICTS: Districts as used herein is synonymous with the word "zones" or "zoning districts" and are as defined in the Michigan Zoning Enabling Act.

DRIVE-IN OR DRIVE-THRU FACILITIES OR ESTABLISHMENTS: A business which, by design, physical facilities or service permits customers to receive goods or services while remaining in their vehicles.

DRIVEWAY: An access allowing ingress and egress from a lot to a street, road, alley, or highway

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 persons, but not including motels, hotels, tourist rooms or cabins.

DWELLING, MULTI-FAMILY: A building designed for exclusive use and occupancy by 3 or more families.

DWELLING, SINGLE FAMILY: A building designed for exclusive use and occupancy by 1 family only.

DWELLING, TWO FAMILY: A building designed for exclusive use and occupancy by 2 families only.

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DWELLING UNIT: One room or suite or two or more rooms of a building or portion thereof designed for use or occupancy by one family for living and sleeping purposes with cooking facilities.

DWELLING UNIT, ACCESSORY: See Accessory Dwelling.

14.2.5 "E" Terms

EASEMENT: A grant of 1 or more of the property rights by the property owner to and/or for the use by the public, a corporation, or another person or entity. If the easement is used for access to a property, then it shall be considered a driveway for purposes of this Ordinance.

EDUCATIONAL INSTITUTIONS: Use of land or a building or buildings as or for an institution not for profit but for the establishment and maintenance of a public or private college, secondary or elementary school or other educational institution for the academic instruction not including organizations that specialize in physical training or development of physical or manipulative skills, or for-profit schools.

ENGINEER, VILLAGE: the person or firm authorized by the Village to advise the President, Village Council, and Planning Commission on drainage, grading, paving, storm water management and control, utilities, and other related site engineering and civil engineering issues. The Village Engineer may be a consultant or an employee of the Village.

ENFORCEMENT OFFICIAL: The Enforcement Official is the person or persons with the responsibility for enforcing and administering requirements of applicable Sections of this Ordinance. The Enforcement Official's responsibilities may be delegated to the Zoning Administrator or other appropriate party so designated by the Village Council. Such titles do not refer to a specific individual, but generally to the office, department, or Village official(s) most commonly associated with the administration of the regulation being referenced.

ERECTED: Built, constructed, altered, reconstructed, moved upon, or any physical operations on the premises that are required for construction, excavation, fill, drainage, and the like, shall be considered a part of erection.

EQUIPMENT RENTAL ESTABLISHMENT: An establishment providing the rental of tools, lawn and garden equipment, construction equipment, party supplies and similar goods and equipment, including storage and incidental maintenance.

ESSENTIAL SERVICES: The construction, alteration or maintenance by private companies or public departments or agencies of the various transmissions, distribution or disposal systems that are essential for the preservation of the public health, safety or general welfare such as: gas, electricity, telephone, water and sewer. Also, this term includes all poles, wires, mains, drains, sewers, pipes, cables, traffic signals, hydrants and other similar equipment or accessories reasonably necessary to provide adequate service of the companies or agencies; but, the term shall not include building or utility substations.

EXTRACTIVE INDUSTRIES: The extraction of minerals, including solids, such as coal and ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes logging and quarrying; well

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operation; milling, such as crushing, screening, washing and flotation; and other preparation customarily done at the extraction site or as a part of the extractive activity.

14.2.6 "F" Terms

FACADE: That portion of any exterior elevation on the building extending from grade to top of the parapet, wall, or eaves and the entire width of the building elevation.

FAMILY: An individual or 2 or more who are domiciled together as a single, domestic, housekeeping unit in a dwelling unit, or a collective number of individuals domiciled together in one dwelling unit whose relationship is of a continuing non-transient domestic character and who are cooking and living as a single nonprofit housekeeping unit. This definition shall not include rooming or boarding houses or any society, club, fraternity, sorority, association, lodge, organization or group of students or other individuals whose domestic relationship is of a transitory or seasonable nature or for an anticipated limited duration of a school term or other similar determinable period, nor a group whose sharing of a dwelling is not to function as a family, but merely for convenience or economics. Anyone seeking the rights and privileges afforded a member of a family by this Ordinance shall have the burden of proof by clear and convincing evidence of their family relationship. Nothing in this definition shall be deemed to confer any legal rights upon an individual on a basis of conduct otherwise unlawful under any existing law.

Commented [JC42]: Discussion on how to allow up to 4 unrelated people to share a dwelling. Require a license? Include 28 days?

FARM: All of the contiguous neighboring or associated land operated as a single unit on which bona fide agriculture is carried on directly by the owner-operator, manager, or tenant-farmer by his own labor or with the assistance of members of his household or hired employees.

FARMERS' MARKET: An occasional or periodic market held in an open area or in a structure where groups of individual sellers offer for sale to the public such items as fresh produce, seasonal fruits, fresh flowers, arts and crafts items, and food and beverages (but not including second-hand items) dispensed from onsite booths.

FENCE: An artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

FINANCIAL SERVICES: Any trust company, savings bank, industrial bank, savings and loan association, building and loan association, commercial bank, credit union, federal association, investment company, or other business association, which is chartered under federal or state law, solicits, receives, or accepts money or its equivalent on deposit and loans money as a regular business.

FILL: The deposit or dumping of any matter onto or into the ground, except for common household gardening, farming, and general ground care.

FINISHED GRADE: The proposed elevation of land of a site after completion of all site preparation work.

FLAG LOT: A parcel of land whose depth exceeds four times its width, or a parcel not having the required minimum frontage, fronting on or abutting a public right-of-way, and where access to the public road is by a narrow, private right-of-way.

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FLOOR AREA: The floor area of all floors of a building or an addition to an existing building. For all buildings except dwelling units used for dwelling purposes, floor area shall include the basement. The area of a floor is computed by measuring the interior faces of the exterior walls of a building.

FLOOR AREA, GROUND: The lot area covered by a building or buildings measured from the exterior faces of exterior walls but excluding decks and terraces and detached accessory buildings.

FLOOR AREA, USABLE: The gross horizontal floor areas of all the floors of a building or structure and of all accessory buildings that have the potential to become usable for human habitation measured from the interior face of the exterior walls. Such floor area that is used or intended to be used principally for dedicated storage, mechanical equipment rooms, unfinished attics, enclosed porches, light and ventilation shafts, public corridors, public stairwells, utility rooms or restrooms shall be excluded from the computation of usable floor area.

FOOD TRUCK: A motorized vehicle or trailer equipped to store, transport, cook, prepare, serve, and sell food.

FOR-PROFIT EDUCATIONAL INSTITUTIONS: An educational institution that are privately controlled entities that are operated as a business with the expectation to generate a positive monetary return.

FOSTER CHILD: A child unrelated to a family by blood or adoption with which he or she lives for the purposes of care and/or education.

FRONTAGE: The portion of any property that abuts a private or public street or a waterway. A corner lot and a through lot have frontage on both abutting private or public streets or a waterway and a street.

FUNERAL HOME: An establishment where the dead are prepared for burial or cremation and where wakes or funerals may be held. May also be referred to as a mortuary.

14.2.7 "G" Terms

GARAGE, RESIDENTIAL: A building, that is either detached or attached and used for the private use of the owner or occupant of a principal building situated on the same lot of the principal building for the storage of motor vehicles with no facilities for mechanical service, repair or storage of a commercial or public nature. For purposes of use classifications in this Ordinance, Residential Garages are considered an accessory use.

GASOLINE SERVICE STATION: An area of land, including any structure thereon, that is used or designed for the supply of gasoline, oil or other fuel for the propulsion of vehicles.

GOLF FACILITY: A facility other than a miniature golf course for the playing of golf at which there may be a clubhouse including rest rooms and locker rooms, maintenance structures, driving range, practice facilities, instruction, and training center. A golf facility may provide additional services customarily furnished such as swimming, outdoor recreation, and related retail sales that may include a restaurant and cocktail lounge if approved as a part of the required special use permit.

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GRADE: The ground elevation established for regulating the height of buildings or structures. The building grade shall be the ground surface adjacent to the walls of the building if the ground is level or flat. If the ground is not entirely level, the grade shall be determined by averaging the highest and lowest elevation of the ground for each face of the structure.

GREENHOUSES: A space, building or structure, or combination thereof, for the storage of live trees, shrubs or plants offered for retail sale on the premises including products used for gardening or landscaping. The definition of nursery within the meaning of this Ordinance does not include any space, building or structure used for the sale of fruits, vegetables, or Christmas trees, either seasonally or year-round.

GROUND-MOUNTED SOLAR INSTALLATIONS: A private system installed as an accessory structure on the ground of a parcel that converts sunlight into electricity or thermal energy, whether by photovoltaics, concentrating solar thermal devices, or any other various experimental solar technologies. The primary purpose is for consumption of generated energy on site.

14.2.8 "H" Terms

HEIGHT OF BUILDING: See BUILDING HEIGHT

HOME OCCUPATION: A gainful occupation traditionally or customarily carried on in the home as a use incidental to the use of the home as a dwelling place, which conforms to the provisions stated in this Ordinance.

HOTEL, MOTEL, AND OTHER TRANSIENT LODGING: Commercial establishments, known as hotels, motor-hotels, and motels, including resort hotels and hotels operated by membership organizations, and open to the general public, primarily engaged in providing lodging, or lodging and meals, for the general public; however, not including bed and breakfast establishments.

14.2.9 "I" Terms

IMPERVIOUS COVERAGE: The part or percentage of the lot that is occupied by all buildings and/ or structures, and impervious surfaces. The percentage is determined by dividing the sum of the ground floor area of all buildings and structures on a lot and impervious surfaces by the net lot area.

IMPERVIOUS SURFACE: Any material which prevents, impedes, or slows infiltration or absorption of storm water directly into the ground at the rate of absorption of vegetation-bearing soils, including building, asphalt, concrete, gravel, and other surfaces.

INGRESS AND EGRESS: As used in this Ordinance, "ingress and egress" generally is used in reference to a driveway that allows vehicles to enter or leave a parcel of property, or to a sidewalk that allows pedestrians to enter or leave a parcel of property, a building, or another location.

INOPERATIVE OR DISMANTLED VEHICLE: Any wheeled vehicle which is self-propelled and/or intended to be self-propelled, and which by reason of dismantling, disrepair or other cause is incapable of being propelled under its own power.

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INSTITUTIONAL USES: Includes churches; accredited public, parochial or private schools; trade schools or colleges; hospitals; parks, non-profit recreational uses; libraries; government owned facilities; fire stations or similar uses providing services necessary to the community.

14.2.10 "J" Terms

JUNIOR ACCESSORY DWELLING UNIT: See Accessory Dwelling, Junior

JUNK: Any motor vehicles, machinery, appliances, products or merchandise with parts missing, or other scrap materials that are damaged, deteriorated, or are in a condition that prevents their use for the purpose for which the product was manufactured.

JUNK YARD: Where junk, waste or discarded or salvaged materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including wrecked vehicles, used building materials, structural materials and equipment and other manufactured goods that are worn, deteriorated or obsolete.

14.2.11 "K" Terms

KENNEL: Any land, building or structure where dogs, cats or other household pets are sold, boarded, housed or bred as a business. It shall also include the keeping of four (4) or more dogs, cats or other household pets over the age of 6 months.

14.2.12 "L" Terms

LAKE: A large body of water surround by land. "Lake" as defined by Part 202 of Michigan's Natural Resources and Environmental Protection Act as amended.

LAND USE PERMIT: See PERMITS.

LIBRARY: A public, nonprofit facility in which literary, musical, artistic, or reference materials such as but not limited to books, manuscripts, computers, recordings, or films are kept for use by or loaning to patrons of the facility, but are not normally offered for sale, and may include community gathering space.

LIVE/WORK UNIT: A single unit (e.g. studio, loft, one-bedroom) consisting of both a residential and commercial/office component that is occupied by the same resident as their primary residence and primary occupation.

LOADING SPACE: A space that is safely and conveniently located so as not to impede pedestrian and vehicular circulation to serve a building, or group of buildings, for the temporary parking of delivery vehicles while loading and unloading merchandise or materials.

LODGE: See CLUB

LOT: A piece, parcel, plot or tract of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory structures or utilized for a principal use and accessory uses, together with such open spaces as are required by this Ordinance. In the case of site condominium

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subdivisions, a lot shall also include the portion of the condominium project designed and intended for separate ownership and use as described in the master deed.

LOT AREA: The total horizontal area within the lot lines of the lot. Lot area cannot include any part of a public right-of-way.

LOT AREA, GROSS: The net lot area plus one-half (l/2) of the area of any public right-of-way area or private road easement immediately adjacent to or abutting the lot.

LOT AREA, NET: The total horizontal area within the lot lines of the lot, exclusive of any abutting public street right-of-way or private road easements, or the area of any lake or river. The net lot area shall be used in determining compliance with minimum lot area standards.

LOT, CONTIGUOUS: Lots adjoining or abutting each other. Lots separated by a right-of-way, road easement or natural or man-made barrier shall not be considered contiguous.

LOT: CORNER, INTERIOR AND THROUGH: Definition

1. A corner Lot is a lot that has at least 2 contiguous sides adjacent to a street.

2. An Interior Lot is a lot other than a Corner Lot having frontage on only one side to a street.

3. A through Lot is an Interior Lot having frontage on two streets that do not intersect at a point contiguous to such lot.

LOT COVERAGE: That parcel or percentage of a lot that is covered by buildings, including accessory buildings, porches, decks, and breezeways.

LOT DEPTH: The horizontal distance between the front street line and rear lot line, measured along the median between the side lot lines.

LOT LINES: The lines abutting a lot as defined herein:

1. Lot Line, Front: That line separating the lot from the street. In case of a corner lot, the lot line separating the narrowest side of the lot from the street. In the case of corner lots having equal street frontage, then the front lot line is on the street where the building address is located. In the case of a through lot, both lot lines abutting the street shall be considered front lot lines for the purpose of front setbacks.

2. Lot Line, Rear: Lot line, which is opposite to and most distant from the front line. In order to assure adequate width of rear yards in irregularly shaped lots, the rear lot line shall be an imaginary line parallel to the front lot line, not less than 20 feet long, lying farthest from the front lot line and wholly within the lot.

3. LOT LINE, SIDE: Any lot line other than the front lot line or rear lot line.

LOT OF RECORD: A parcel of land where the dimensions are shown on a document or on a map that is on file with the Benzie County Register of Deeds.

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LOT WIDTH: Lot width shall be measured along the front line or street line.

LOW IMPACT DEVELOPMENT (LID) STORMWATER MANAGEMENT: LID includes a variety of practices that mimic or preserve natural drainage processes to manage stormwater. LID practices typically retain rain water and encourage it to soak into the ground rather than allowing it to run off into ditches and storm drains where it would otherwise contribute to flooding and pollution problems. Examples include, but are not limited to rain gardens, rooftop gardens, vegetated swales, cisterns, permeable pavers, porous pavement, and filtered stormwater structures.

14.2.13 "M' Terms

MAJOR STREET: See STREET.

MANUFACTURED HOUSING COMMUNITY: A parcel or tract of land under the control of a person upon which 3 or more manufactured homes are located on a continual, nonrecreational basis and which is offered to the public for that purpose regardless of whether a charge is made therefore, together with any building, structure, enclosure, street, equipment, or facility used or intended for use incident to the occupancy of a manufactured home. A manufactured housing community owner shall operate the community according to the standards established and referenced in the Mobile Home Commission Rules and Michigan Public Act 96 of 1987, as amended
and Manufactured Housing Commission Rules.

MANUFACTURING, LIGHT: The act of processing, assembling, fabricating, treating, and packaging of unfinished materials into a more complete or finished product, and incidental storage sales and distribution of such products, which may be perceived to have a relatively limited to moderate potential for adverse effect on surrounding properties and the environment, including noise, vibration, pollution, odor, and aesthetics. Light manufacturing does not include the process or extraction of raw materials or compounds.

MARINA: A commercial or public mooring, berthing or docking facility for water craft with or without provisions for launching, retrieving, servicing, boat storage, fueling, sales of accessory supplies, or boater services such as restrooms, showers, self-service laundry and fish cleaning stations.

MASTER PLAN: Any plan adopted or amended under this Michigan Planning Enabling Act, PA 33 of 2008, as amended. This includes, but is not limited to, a plan prepared by a planning commission authorized by the act and used to satisfy the requirement of Section 203(1) of the Michigan Zoning Enabling Act, PA 110 of 2006, as amended, regardless of whether it is entitled a master plan, basic plan, county plan, development plan, guide plan, land use plan, municipal plan, Village plan, plan, or any other term.

MEZZANINE: An intermediate floor or levels between the floor and the ceiling of any story with an aggregate floor area of not more than one-third (1/3) of the floor area of such story in which the level or levels are located.

MICHIGAN PUBLIC HEALTH CODE: MCL 333.12501 et seq, as amended.

MICHIGAN ZONING ENABLING ACT or MZEA: Public Act 110 of 2006, being MCL 125.3101 et seq, as amended.

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MICROBREWERY: A licensed brewery that manufactures in total less than 60,000 barrels of beer per year and that may sell the beer manufactured to consumers at the licensed brewery premises for consumption on or off the licensed brewery premises and to retailers as provided in Section 203 of the Michigan Liquor Control Code. In determining the 60,000-barrel threshold, all brands and labels of a brewer, whether manufactured in this state or outside this state, must be combined and all facilities for the manufacturing of beer that are owned or controlled by the same person must be treated as a single facility.

Commented [JC43]: Allow in Comm. w/SPR/SUP

MICRODISTILLERY: As defined by Michigan Liquor Control Code.

Commented [JC44]: Allow in Comm. w/SPR/SUP. Need to get actual definition for consistency.

MINOR STREET: A public way, the principal use or function of which is to give access to abutting properties. This includes local neighborhood street network for property access.

MOBILE HOME: See "Manufactured home."

MOBILE HOME COMMISSION ACT: MCL 125.2301 et seq

MOBILE HOME PARK, TRAILER COACH PARK OR PARK: See "Manufactured Housing Community."

MODULAR HOME: A factory-built home constructed off-site after 1971 and transportable in one or more Sections. A modular home is designed and constructed to the State's building code standards for stick-built homes and is so labeled with a Factory Built Unit Certification tag. Modular homes may be towed on-site with or without a chassis that is not structurally a part of the dwelling, and which may or may not remain after installation on a permanent perimeter foundation constructed of block or poured concrete. Individual components, or modules, of a modular home may be placed end-to-end, side-by-side, or stacked. For the purpose of this Ordinance, modular homes shall be allowed in any residential zoning district, subject to all other applicable standards. Also known as a factory built home.

MOTEL: See HOTEL.

MOTOR VEHICLE: See AUTOMOBILE.

MUNICIPALITY: Village of Elberta, Benzie County, Michigan.

MUSEUM: A building having public significance by reason of its architecture or former use or occupancy or a building serving as a repository for a collection of natural, scientific, or literary curiosities or objects of interest, or works of art, and arranged, intended, and designed to be used by members of the public for viewing, with or without an admission charge, and which may include as an accessory use the sale of goods to the public as gifts or for their own use.

14.2.14 "N" Terms

NATURAL FEATURES: Natural features shall include soils, wetlands, floodplain, water bodies and channels, topography, trees and other types of vegetative cover, and geologic formations.

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NEIGHBORHOOD COMMERCIAL ESTABLISHMENTS: Low intensity, neighborhood commercial uses intended to provide for the convenient day-to-day retail and supportive needs of the immediate surrounding residential area.

NONCONFORMING LOT: A lot that fails to meet the requirements for area, height, yards, buffer, or other bulk standards and regulations, generally applicable in the district because of a change in the applicable zoning district regulations, annexation, condemnation of a portion of the lot, or other governmental action.

NONCONFORMING SITE: A lot, parcel, or development site that was lawfully established but that does not comply with the standards of Article 3, or other applicable site standards of this ordinance

NONCONFORMING STRUCTURE: A structure legally existing at the time of adoption of this Ordinance or later amendment, which does not meet the dimensional requirements of the district within which located.

NONCONFORMING USE: A use legally existing at the time of adoption of this Ordinance or later amendment, which does not meet the use requirements of the district within which it is located.

NONRESIDENTIAL ZONING DISTRICT: A zoning district primarily established for land uses other than dwellings. Nonresidential zoning districts shall include those zoned Downtown Commercial, Waterfront, Deep Water Port, and Neighborhood Commercial.

NUISANCE: Any offensive, annoying, or disturbing practice or object, that prevents the free use of one's property, or that renders its ordinary use or physical occupation uncomfortable. Nuisance commonly involves continuous or recurrent acts that give offense to the senses, violate the laws of decency, obstruct reasonable and comfortable use of property, or endangers life and health.

NURSERY: See GREENHOUSE.

NURSING HOME: A home for the care of the aged, infirm, or those suffering from bodily disorders, wherein two (2) or more persons are housed or lodged and furnished with nursing care. Such facilities are licensed in accordance with PA 139 of 1956, as amended.

14.2.15 "O" Terms

OBSCURING WALL: Shall mean a structure of definite height and location to serve as an opaque screen in carrying out the requirements of this Ordinance.

OCCUPANCY LOAD: One (1) person per 200 square feet for apartments and multi-family dwellings. Square footage shall be calculated using the interior perimeter measurements of each individual unit Square footage divided by the number of occupants shall not be less than 200 square feet per occupant.

OCCUPIED: Used in any manner. Includes the meaning of intent, design, or arranged for occupancy.

OFF-SITE PARKING FACILITY: A public or private off-street parking facility designed or intended to provide peripheral collection and storage of vehicles including accessory structures such as passenger shelters. Off-site parking facilities may be surface lots or parking structures.

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ORDINARY HIGH WATER MARK: The line between the upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake that has a level established by law, it means the high-established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark.

Commented [JC45]: Do we want to note an established elevation per EGLE?

OPEN SPACE: An area that is open to the sky and exclusive of roads, parking lots and building envelopes.

OUTDOOR SALES: The display and sale of merchandise beyond the perimeter of a building.

14.2.16 "P" Terms

PARCEL: A continuous area, tract, or acreage of land that has not been divided or subdivided according to the provisions of the Land Division Control Act (PA 288 of 1967, as amended) or the Condominium Act (PA 59 of 1978, as amended) and has frontage on a public, or private road or access easement.

PARKING LOT, OFF-STREET: An area within a lot or parcel that provides vehicular parking spaces along with adequate drives and aisles for maneuvering, so as to provide safe and convenient access for entrance and exit and for parking of more than three (3) vehicles. PARKING SPACE: An area of definite length and width. Said area shall be exclusive of drives, aisles or entrances giving access thereto, and shall be fully accessible for the storage or parking of permitted vehicles.

PERFORMANCE GUARANTEE: A financial guarantee to ensure that specific improvements, facilities, construction, or activities required or authorized by this Ordinance will be completed in compliance with the Ordinance, regulations, and/or approved plans and specifications of the development.

PERMITS: Under this Ordinance, permits are classified as either Land Use Permits or Special Land Use Permits. Land Use Permits are issued by the Zoning Administrator and are as defined by the MZEA. Special Land Use Permits or Special Use Permits may be granted following review and approval of the Planning Commission and, if applicable, the Village Council, and issued pursuant to the Michigan Zoning Enabling Act.

PERMITTED USE: A permitted use is a use that may be lawfully established in a particular district or districts provided it conforms with all requirements, regulations, and standards of such district and this Ordinance.

PERSON: An individual, trustee, executor, fiduciary, corporation, firm, partnership, association, organization, or other legal entity acting as a unit.

PERSONAL SERVICES: Enterprises serving individual necessities, such as barber shops, beauty salons and spas, clothing rental, coin-operated laundromats, marriage bureaus, massage services by masseurs/masseuses, personal laundry and dry cleaning establishments, pressing, dyeing, tailoring, shoe repair, photographic studios, tattoo parlors, and travel agencies.

PERVIOUS SURFACE: A surface that permits full or partial absorption of storm water.

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PET: A domesticated dog, cat, bird, gerbil, hamster, guinea pig, turtle, fish, rabbit, or other similar animal that is commonly available and customarily kept for pleasure or companionship.

PLANNED SHOPPING CENTERS: A development of 1 or more buildings on a single site having grouped retail stores and service establishments

PLANNED UNIT DEVELOPMENT: A "planned unit development" under Section 503 of the Michigan Zoning Enabling Act, as periodically amended.

PLANNING COMMISSION: The Planning Commission of the Village of Elberta, Benzie County, Michigan as designated in the Michigan Planning Enabling Act, PA 33 of 2008, as amended.

PLOT PLAN: A plan that is prepared according to requirements stated in this Ordinance, containing information required for such a plan. A plot plan is less detailed than a formal site plan. A plot plan is generally used for discussion or conceptual purposes in advance of a formal site plan submission. A plot plan does not substitute for a formal site plan.

PRINCIPAL BUILDING: A building in which is conducted the principal use of the lot upon which it is situated.

PRINCIPAL OR MAIN USE: The primary or predominant use of any lot or parcel.

PRIVACY SCREEN: An artificially constructed barrier of wood, wire, metal or any other material or combination of materials, commonly used in fence construction, or, a landscape barrier utilizing a combination of evergreen and deciduous shrubs and trees. A privacy screen is intended to screen a selected use or area in a private residential yard.

PRIVATE STREET or ROAD: See STREET.

PROFESSIONAL SERVICES: A business that offers any type of professional service to clients which requires as a condition precedent to the rendering of such service the obtaining of a license, higher education degree, or other legal authorization. By way of example, and without limiting the generality of this definition, professional services include those rendered by certified public accountants, public accountants, engineers, architects, planners, landscape architects, interior designers, attorneys at law, life insurance agents, advertising, environmental analysts, insurance agents, management consultants, title agents, and realtors. Professional services shall not include healthcare or financial services, or veterinarian clinics.

PROPERTY LINE: The line separating a piece of property from the street right-of-way and the lines separating a parcel of property from the parcels next to it. See also LOT LINE.

PROTECTED ROOT ZONE: The area surrounding the trunk of a tree established with a radius of one and a half (1.5) feet for every one (1) inch caliper of trunk where grading, cutting, storing of materials, or moving of machinery must be outside of.

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PUBLIC USE: Basic services usually furnished by local government, but which also may be provided by private enterprise to support the development of the community. Public uses may be categorized as one of the following:

A. Critical: such as, but not limited to fire station, ambulance services, police station, governmental uses etc., and associated facilities.

B. Essential: the erection, construction, alteration, or maintenance by public utilities or municipal or governmental agencies of underground or overhead gas, electrical, steam, communications, supply, or disposal systems including poles, wires, mains, drains, sewers, pipes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith, which are necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies for the public health, safety, or general welfare.

C. Supporting: public uses such as, but not limited to, Village hall, library, park, athletic fields, public recreational facility, open space, civic center, community center, official government offices, authority office, post office, special events authorized by the Village, etc., and associated facilities.

PUBLIC UTILITY: Any person, firm, corporation, municipal department or board fully authorized to furnish to the public services such as electricity, gas, steam, telephone, internet service, transportation, water, sewer, or cable television.

14.2.17 "Q" Terms

QUALIFIED RESIDENTIAL TREATMENT PROGRAM: Subject to Section 1 of 1973 PA 116, MCL 722.111, a qualified residential treatment program means a program within a child caring institution to which all of the following apply:

1. The program has a trauma-informed treatment model, evidenced by the inclusion of trauma awareness, knowledge, and skills into the program's culture, practices, and policies.

2. The program has registered or licensed nursing and other licensed clinical staff on-site or available 24 hours a day, 7 days a week, who provide care in the scope of their practice as provided in parts 170, 172, 181, 182, 182A, and 185 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17097, 333.17201 to 333.17242, 333.18101 to 333.18117, 333.18201 to 333.18237, 333.18251 to 333.18267, and 333.18501 to 333.18518.

3. The program integrates families into treatment, including maintaining sibling connections.

4. (iv) The program provides aftercare services for at least 6 months post discharge.

5. The program is accredited by an independent not-for-profit organization as described in 42 USC 672(k)(4)(G).

6. The program does not include a detention facility, forestry camp, training school, or other facility operated primarily for detaining minor children who are determined to be delinquent.

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14.2.18 "R" Terms

RECREATION CAMP: An establishment consisting of a permanent building or group of permanent buildings in combination with temporary buildings such as tents used seasonally for recreational purposes.

RECREATION LAND: An entity which receives a fee, whether by membership or daily passes, in return for the provision of some active recreational activity including but not limited to: gymnastic facilities, indoor soccer, bike & skate parks, racquet clubs, tennis and pickle ball courts, physical fitness facilities, swimming pools, athletic fields, yoga, spinning, martial arts, and other similar activities related to personal or team athletics, exercise, fitness and including their ancillary support services.

RECREATIONAL VEHICLES:

RECREATIONAL VEHICLES - LARGE: Any structure or vehicle designed and/or used for living or sleeping and/ or recreational purposes and equipped with wheels or tracks to facilitate movement from place to place, and automobiles when used for living or sleeping purposes and/or recreational purposes including pick-up coaches (campers), travel trailers, motorized homes, tiny homes on wheels, motorized watercraft, all terrain vehicles, special terrain vehicles, and utility trailers, excluding small all terrain vehicles, snowmobiles, or watercraft intended for one or two persons.

RECREATIONAL VEHICLES - SMALL: All terrain vehicles, snowmobiles, or watercraft intended for one or two persons.

RELIGIOUS INSTITUTION: A place of worship or religious assembly with related facilities such as the following in any combination: rectory or convent, private school, meeting hall, offices for administration of the institution, licensed child or adult daycare, playground, cemetery.

RESIDENTIAL USE: A use intended to provide one or more dwellings and may include allowed accessory uses and structures.

RESIDENTIAL ZONING DISTRICT: A zoning district primarily established for dwellings as a land use. Residential zoning districts shall include those zoned C, NR, and FR zoning districts.

RESTAURANT: An establishment in which the principal use is the preparation and sale of food and beverages. The food and beverage may be consumed on-site, carried out, or offered for delivery. Restaurants may include the sale of prepared food and beverages to other establishments for resale or consumption.

RETAIL BUSINESS: A commercial enterprise that provides goods and/or services directly to the consumer, where such goods are available for immediate purchase and removal from the premises by the purchaser.

RIGHT-OF-WAY: The strip of land over which an easement exists to allow facilities such as streets, roads, highways, and power lines to be built.

RIVER: a flowing body of water with a drainage area of 80 or more square miles.

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ROAD: See STREET.

ROOF-MOUNTED SOLAR INSTALLATIONS: A private system installed as an accessory structure on the roof of a building that converts sunlight into electricity or thermal energy, whether by photovoltaics, concentrating solar thermal devices, or any other various experimental solar technologies. The primary purpose is for consumption of generated energy on site.

14.2.19 "S" Terms

SENIOR LIVING FACILITY: Licensed personal care facilities, other than hotels, adult foster care homes, hospitals, nursing homes, or county medical care facilities, that provide supervised personal care to twenty one (21) or more individuals who are age sixty (60) or older. Homes that are operated in conjunction with and as a distinct part of a licensed nursing home may serve twenty (20) or fewer adults.

SETBACK: The minimum required horizontal distance from the applicable lot line within which no buildings or structures may be placed. The measurement for a setback shall be taken from the lot line to the exterior wall of any building or structure.

SEXUALLY ORIENTED BUSINESS: A business or commercial enterprise engaging in any of the following, or other similar uses:

A. Adult Arcade: Any place to which the public is permitted or invited wherein coin-operated or slug-operated electronically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by depicting or describing of Specified Sexual Activities or Specified Anatomical Areas.

B. Adult Bookstore or Adult Video Store: A commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration one or more of the following: Books, magazines, periodicals or other printed matter or photographs, films, motion picture, video cassettes or video reproductions, slides or other visual representations or media which depict or describe Specified Sexual Activities or Specified Anatomical Areas; or

    a. Instruments, devices, or paraphernalia that are designed for use in connection with Specified Sexual Activities.

    b. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing Specified Sexual Activities or Specified Anatomical Areas and still be categorized as an Adult Bookstore or Adult Video Store. The sale of such material shall be deemed to constitute a principal business purpose of an establishment if it occupies twenty-five (25%) percent or more of the floor area or visible inventory within the establishment.

C. Adult Cabaret: A nightclub, bar, restaurant, or similar commercial establishment that regularly features any of the following: Persons who appear in a state of nudity;

    a. Live performances that are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities;

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b. Films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; or

c. Persons who engage in lewd, lascivious, or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

D. Adult Motel: A hotel, motel, or similar commercial establishment that: Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas and has a sign visible from the public right of way that advertises the availability of any of the above;

a. Offers a sleeping room for rent for a period of time that is less than twelve (12) hours; or

b. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twelve (12) hours.

E. Adult Motion Picture Theater: A commercial establishment which for any form of consideration, regularly and primarily shows films, motion pictures, video cassettes, slides, or other photographic reproductions or visual media that are characterized by depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

F. Adult Theater: A theater, concert hall, auditorium, or similar commercial establishment that regularly features a person or persons who appear in a state of nudity or live performances that are characterized by exposure of Specified Anatomical Areas or by Specified Sexual Activities.

G. Nude Model Studio: Any place where a person who displays Specified Anatomical Areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration, but does not include an educational institution funded, chartered, or recognized by the State of Michigan.

H. Nudity Or A State Of Nudity: Knowingly or intentionally displaying in a public place, or for payment or promise of payment by any person including, but not limited to payment of an admission fee, any individual's genitals or anus with less than a fully opaque covering, or a female individual's breast with less than a fully opaque covering of the nipple and areola. Public nudity does not include any of the following: A woman's breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.

a. Material as defined in Section 2 of Act No. 343 of the PAs of 1984, being Section 752.362 of the Michigan Compiled Laws.

b. Sexually explicit visual material as defined in Section 3 of PA 33 of 1978, being Section 722.673 of the Michigan Compiled Laws. a. Specified Anatomical Areas: Means and includes any of the following: 1) Less than completely and opaquely covered: Human genitals, Pubic region, Buttocks, Female breast below a point immediately above the top of the areola.

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c. Human male genitals in a discernible turgid state even if completely or opaquely covered.

I. Specified Sexual Activities: Means and includes any of the following:

a. Human genitals in a state of sexual arousal.

b. Acts of or simulated acts of human masturbation, sexual intercourse, sodomy, bestiality, fellatio or cunnilingus.

c. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

d. Excretory functions as part of or in connection with any of the activities set forth in 1) - 3) above.

SHORT-TERM RENTALS.: Single-family dwelling units that are rented to individuals for a fee. The length of a short-term rental is between 1 day and 28 days.

SIGN: Any device, fixture, placard, or structure that uses any color, form graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. Signs shall include, but not be limited to, banners, billboards and canopy signs. House numbers, addresses and name plates not exceeding two (2) square feet shall not be considered signs. Signs located completely within an enclosed building shall not constitute a sign, nor shall national, state, municipal, or official flags.

SIGN AREA: The entire area within a continuous perimeter, enclosing the extreme limits of sign display, including any frame or border. The sign area shall not include necessary supporting framework if functionally proportional and incidental to the display, such as braces, brackets posts, and uprights. Decorative features, if not a vital part of the supporting framework shall be included in the sign area calculation. Curved, spherical or any other shaped sign face shall be computed on the basis of actual surface area. The copy of signs composed of individual letters, numerals or other devices shall be the sum of the area of the smallest rectangle or other geometric figure encompassing all of said letters or devices. The calculation for a double-faced sign shall be the area of one face only. Double-faced signs shall be so constructed that the perimeter of both faces coincide, are parallel and are not more than 12 inches apart.

SITE CONDOMINIUM SUBDIVISIONS: The division of land on the basis of condominium ownership whereby a master deed is required in accordance with the Condominium Act, Act 59 of 1978, as amended.

SITE PLAN: The development or site plan for one or more lots on which is shown the existing and proposed conditions of the lot, including topography, vegetation, drainage, flood plains, wetlands, and waterways; landscaping and open spaces; walkways; means of ingress and egress; pedestrian and vehicular circulation; utility services; structures and buildings; signs and lighting; berms, buffers, and screening devices; surrounding development; and any other information that reasonably may be required in order that an informed decision can be made by the approving authority.

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SMALL DISTILLERY: A licensed manufacturer of spirits annually manufacturing in this state not more than 60,000 gallons of spirits, of all brands combined.

SMALL WINERY: A licensed wine maker manufacturing or bottling not more than 50,000 gallons of wine in one calendar year. A small wine maker is not required to bottle wine it manufactures.

SOLAR ENERGY FARMS: A utility-scale commercial facility that converts sunlight into electrical or thermal energy, whether by photovoltaics, concentrating solar thermal devices or any other various experimental solar technologies. The primary purpose it the wholesale or retail sale of generated energy off site.

SPECIAL EVENT: An occurrence or noteworthy happening of seasonal, civic, or religious importance, that is organized and sponsored by a non-profit community group, congregation, organization, club or society, and that offers a distinctive service to the community, such as public entertainment, community education, civic celebration, or cultural or community enrichment. Special events typically run for a defined short period (less than two (2) weeks) and are unlike the customary or usual activities generally associated with the property where the special event is to be located.

SPECIAL USE: Any land use which requires approval by the Village Council according to the standards listed in this Ordinance, and as authorized in the Michigan Zoning Enabling Act, Act 110 PA 2006, as amended.

SPECIAL USE PERMIT: See PERMITS.

STATE LICENSED RESIDENTIAL FACILITY: A structure constructed for residential purposes that is licensed by the State of Michigan under the Adult Foster Care Facility Licensing Act, as defined in that act, MCL 125.3102. A state licensed residential facility shall be considered a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone. However, the foregoing shall not apply to adult foster care facilities licensed by a state agency for care and treatment of persons released from or assigned to adult correctional institutions.

STORY: The portion of a building between the surface of any floor at grade level and the surface of the floor next above it or if there be no floor above it, then the space between such floor and the ceiling next above it. (GRAPHIC)

STREAM: A "stream" as defined by Part 303 of Michigan's Natural Resources and Environmental Protection Act, MCL 324.30101 et seq.

STREET: A publicly or privately owned and maintained right-of-way which affords traffic circulation and principal means of access to abutting property, including any avenue, place, way, drive, lane, boulevard, highway, road or other thoroughfare, except an alley.

A. Private Street: Any street that is to be privately maintained and has not been accepted for maintenance by Benzie County, the State of Michigan, the federal government, or any other governmental unit, but that meets the requirements of this Ordinance or has been approved as a private road by the Village under any prior ordinance.

Commented [JC46]: Where is this use allowed? What is the difference between a small and micro distillery?

Commented [JC47]: Where is this allowed?

Commented [JC48]: Where is this allowed. Make sure consistent w State requirements.

Commented [JC49]: Make sure consistent w Police Power Ordinance.

Commented [JC50]: Needed?

Commented [AW51]: NOTE

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B. Public Street: Any street or portion of a road that has been dedicated to and accepted for maintenance by Benzie County, State of Michigan, the federal government, or any other governmental unit.

C. Arterial Street: See Major Street.

D. Collector Street: A street whose principal function is to carry traffic between local streets and arterial streets but may also provide direct access to abutting properties.

E. Cul-De-Sac: A street that terminates in a vehicular turnaround.

F. Major Thoroughfare: See ARTERIAL STREET.

G. Major Street. A public street, the principal use or function of which is to provide an arterial route through traffic, with its secondary use or function the provision of access to abutting property.

H. Local Street: A street whose principal function is to provide access to abutting properties.

STREET LOT LINE: see LOT LINE, FRONT

STRUCTURAL ADDITION: Any alteration that changes the location of an exterior wall of a building or modifies the area of a building.

STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, including buildings, signs, billboards, antennas, swimming pools, parking areas, sheds, decks, sea walls, weirs and jetties. The term "structure" shall not include fences and driveways.

SUBDIVISION: A subdivision as defined by the State Land Division Act of 1967.

SUBDIVISION PLAT: The division of a tract of land for the purpose of sale or building development, in accordance with the Land Division Act, PA 288 of 1967, as amended, and the Municipal land division regulations.

SUPPORT LABORATORY: A facility for scientific laboratory analysis of natural resources, medical resources, and manufactured materials. The scientific analysis is generally performed for an outside customer, to support the work of that customer. This category includes environmental laboratories for the analysis of air, water, and soil; medical or veterinary laboratories for the analysis of blood, tissue, or other human medical or animal products. Forensic laboratories for analysis of evidence in support of law enforcement agencies would also be included in this category.

SWIMMING POOL: A structure or container designed to hold water to a depth of greater than twenty four (24) inches, intended for swimming or bathing. A swimming pool shall be considered an accessory structure.

14.2.20 "T" Terms

TASTING ROOM: Means any of the following:

Commented [JC53]: Review Private Roads.

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A. A location on the manufacturing premises of a brewer or micro brewer where the brewer or micro brewer may provide samples of or sell at retail for consumption on or off the premises, or both, beer it manufactures.

B. A location on or off the manufacturing premises of a wine maker or small winemaker where the wine maker or small wine maker may provide samples of or sell at retail for consumption on or off the premises, or both, shiners, wine it manufactured, or, for a small wine maker only, wine it bottled.

C. A location on or off the manufacturing premises of a distiller or small distiller where the distiller or small distiller may provide samples of or sell at retail for consumption on or off the premises, or both, spirits it manufactured.

D. A location on the manufacturing premises of a mixed spirit drink manufacturer where the mixed spirit drink manufacturer may provide samples of or sell at retail for consumption on or off the premises, or both, mixed spirit drinks it manufactured.

E. A location on or off the manufacturing premises of a brandy manufacturer where the brandy manufacturer may provide samples of or sell at retail for consumption on or off the premises, or both, brandy it manufactured.

TELECOMMUNICATION TOWERS: Any structure designed and constructed primarily for the purpose of supporting one or more personal wireless service facility antennas, including but not limited to monopoles, guyed towers, and lattice towers

TEMPORARY USE or BUILDING: A use or zoning permitted to exist for a limited period under conditions and procedures provided for in this Ordinance.

THEATER: An outdoor area or building or part of a building devoted to showing motion pictures, or for dramatic, dance, musical, or other live performances.
THOROUGHFARE: See STREET

14.2.21 "U" Terms

UNDERGROUND HOME: A residence with sides which are either partially or totally below grade designed as a complete living unit. An underground home shall include earth-bermed, earth sheltered and envelope homes and similar dwelling units. The underground home shall be at grade on one side or have one exit at a common grade to the interior of the home.

USE: The principal purpose, for which land or a building is arranged, designed or intended or for which land or a building is or may be occupied.

UTILITY POLE: Means a pole or similar structure that is or may be used in whole or in part for cable or wireline communications service, electric distribution, lighting, traffic control, signage, or a similar function, or a pole or similar structure that meets the height requirements and is designed to support

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small cell wireless facilities. Utility pole does not include a sign pole less than fifteen (15) feet in height above ground.

UTILITY TRAILER: A small trailer that is not self-propelled that is designed to be pulled by an automobile, van, or pick-up truck and not to stay, sleep, or live in.

14.2.22 "V" Terms

VACANCY: An unoccupied space.

VARIANCE: A modification of the literal provisions of the Zoning Ordinance granted by the Zoning Board of Appeals (ZBA).

VEHICLE: Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices propelled by human power or used exclusively upon stationary rails or tracks.

VESTED RIGHT: A right that has become fixed. Vested rights are often established by showing that a development permit has been obtained and substantial construction started on the project.

VETERINARIAN CLINIC: A place where animals or pets are given medical or surgical treatment and are cared for during the time of such treatment. Use as a kennel shall be limited to short-time boarding and shall be only incidental to such hospital use.

VETERINARY HOSPITAL: A veterinary hospital is a medical facility dedicated to the care and treatment of animals. Unlike smaller clinics, these hospitals are typically larger, equipped with advanced medical equipment, and staffed by a team of veterinarians and specialists. They provide a range of services, including animal diagnosis, care, medication, and treatment for wounds and illnesses. Additionally, veterinary hospitals focus on aspects like animal husbandry and research on nutrition.

VILLAGE COUNCIL: Five residents that are elected by the residents of the Village of Elberta to serve four year terms The Village Council includes a President and four Trustees.

VILLAGE PLANNER: The Village Planner is the person or firm designated by the Village Council and Planning Commission to advise the Village on planning, zoning, land use, housing, and other related planning and development issues. The Village Planner may be a consultant or an employee of the Village.

14.2.23 "W" Terms

WALL: An upright structure, typically constructed of wood, masonry, or stone materials, that encloses, divides, or protects an area.

WAREHOUSING AND DISTRIBUTION: A use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment, excluding bulk storage of materials that are inflammable or explosive or that present hazards or conditions commonly recognized as offensive. May include frequent, heavy truck traffic, open storage of materials, or nuisances such as dust, noise and odors, and wholesale activities, but does not include on-site manufacturing.

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WATERCRAFT: Any registered vessel or floating craft, either motorized, non-motorized, personal watercraft, or sail, designed to carry any number of passengers.

WATERCRAFT, PERSONAL: A registered motorized vessel or floating craft specifically designed to carry astraddle not more than four (4) passengers. For purposes of determining the number of watercraft permitted under this Ordinance, a personal watercraft shall be considered as one-half of a watercraft.

WATERFRONT PARCEL OR LOT: Any parcel or lot of land having frontage along the shore or bank of a lake or stream.

WETLAND: Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh and which is any of the following:

1. Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.

2. Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than 5 acres in size.

3. Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and 5 acres or less in size if the Michigan Department of Environmental Quality has determined that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction.

WIND TURBINE GENERATORS: An alternate energy device which converts wind energy by means of a rotor to mechanical or electrical energy. A wind generator may also be deemed a windmill.

WIRELESS COMMUNICATION EQUIPMENT: The set of equipment and network components used in the provision of wireless communication services, including, but not limited to, antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cables, coaxial and fiber optic cables, but excluding wireless communications support structures.

Commented [JC55]: Where allowed? Need minimum standards, colocation etc.

WIRELESS SUPPORT STRUCTURE: Means a freestanding structure designed to support or capable of supporting small cell wireless facilities. Wireless support structure does not include a utility pole.

WIRELESS TELECOMMUNICATION FACILITY: All facilities, structural, attached, accessory or otherwise, related to the use of the radio frequency spectrum for the purposes of transmitting or receiving radio signals and may include, but is not limited to: radio and television towers; telephone devices and exchanges; microwave relay towers; telephone transmission equipment buildings; and commercial mobile radio service facilities. Not included within this definition are: citizen band radio facilities; short wave facilities; ham and amateur radio facilities; television reception antennae; satellite dishes; and governmental facilities that are subject to state and federal Jaw or regulations that preempt municipal regulatory authority.

WIRELESS TELECOMMUNICATION SUPPORT STRUCTURE - TOWER: Any wireless telecommunication facility erected or modified to support attached wireless telecommunication facilities, or other antennae or facilities, including supporting lines, cables, wires, braces and masts intended primarily for the

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purpose of mounting an attached wireless telecommunication facility or similar apparatus above grade. This includes, but is not limited to, any ground or roof-mounted pole, monopole, lattice tower, light pole, utility pole, wood pole, guyed wire tower, spire, other similar structure or combination thereof, or other structures that appear to be something other than a mere support structure.

14.2.24 "X" Terms

14.2.25 "Y" Terms

YARD: An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except as otherwise provided herein.

YARD – FRONT: A yard extending across the full width of the lot, the depth of which is the distance between the front lot line and the nearest exterior wall of the main building. In the case of waterfront lots, the yard fronting on the street shall be considered the front yard.

YARD - REAR. A yard extending across the full width of the lot, the depth of which is the distance between the rear lot line and the nearest exterior wall of the main building.

YARD – SIDE: A yard between a main building and the side lot line, extending from the front yard to the rear yard. The width of the required side yard shall be measured from the nearest point of the side lot line to the nearest exterior wall of the main building.

YARD – WATERFRONT: A yard measured from the ordinary high-water mark established by the State of Michigan to the nearest exterior wall of the main building.

Commented [NE56]: Does the Village have the ordinary high-water mark as established by the State of Michigan? I know Lake Michigan would have one, but what about the other lakes within the Village?

14.2.26 "Z" Terms

ZONING ADMINISTRATOR: The administrator of this Ordinance appointed by the Village Council.

ZONING BOARD OF APPEALS or BOARD OF APPEALS: The Village of Elberta Zoning Board of Appeals.

ZONING DISTRICT: A portion of the incorporated area of the Village within which on a uniform basis, certain uses of land and buildings are permitted and within which certain yards, open spaces, lot areas, and other requirements are established under the provisions of this Ordinance.

ZONING PERMIT: A standard form issued by the Zoning Administrator, upon application and declaration by the owner or his duly authorized agent, granting approval for the construction or use for which an application was made. Also referred to as a land use permit.

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