

THE VILLAGE OF ELBERTA

ZONING ORDINANCE

Benzie County, Michigan

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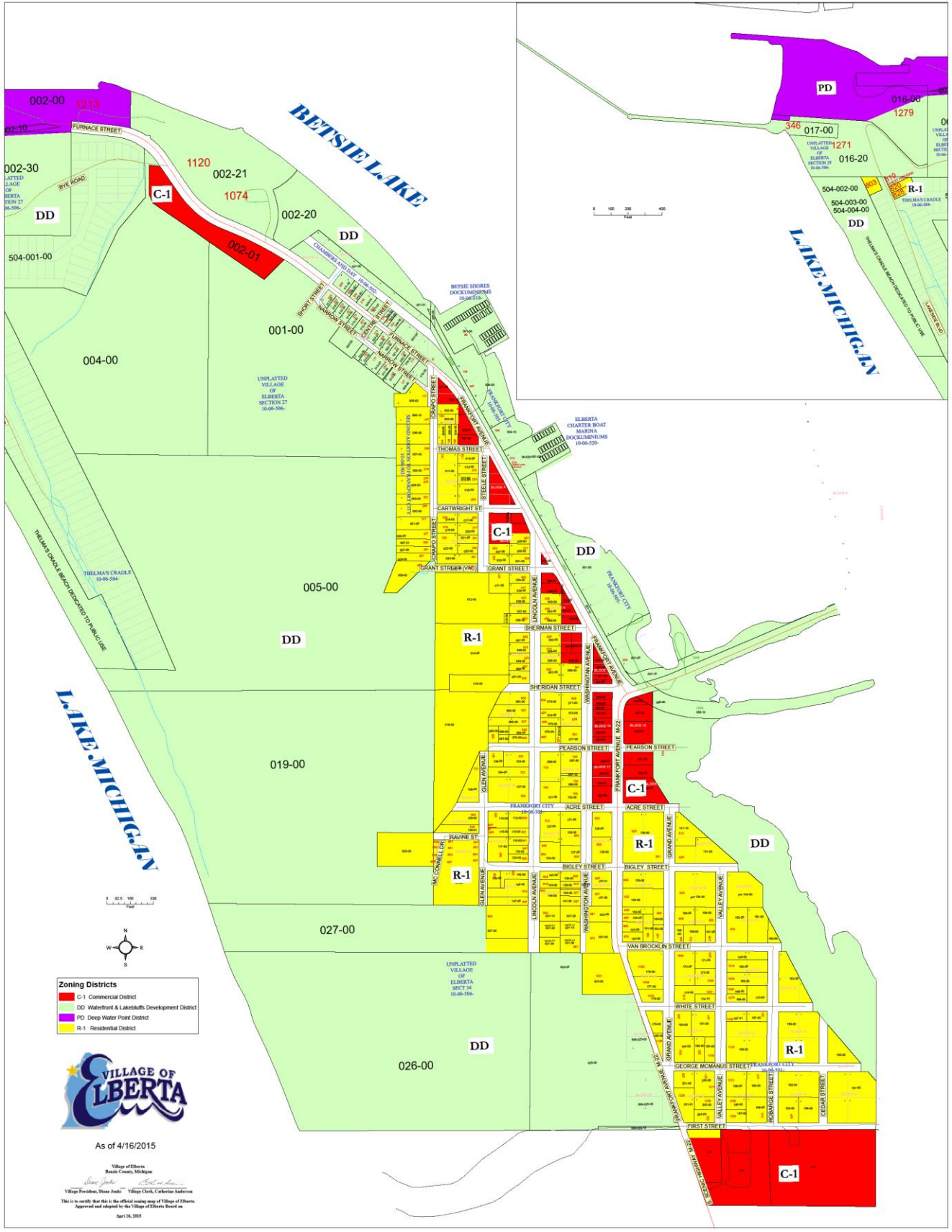
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INDEX

Article 1 - Title and Purpose	
1.01 Short Title	1
1.02 Purpose	1
1.03 Legal Basis	1
1.04 Interpretation	1
1.05 Scope	1
1.06 Zoning Affects All Structures and Land and the Use Thereof	1
Article 2 - Definitions	
2.01 Rules Applying to the Text	2
2.02 Definitions	2
Article 3 - Reserved	10
Article 4 - Reserved	10
Article 5 - Administration and Enforcement	
5.01 Administration	11
5.02 Zoning Administrator	11
5.03 Land Use Permits and Permit Process	11
5.04 Application Fees and Posting of Performance Guarantees	12
5.05 Rehearing Process	13
5.06 Amendments	14
5.07 Notice	14
5.08 Violations	16
5.09 Interpretation and Conflict	17
5.10 Declaration of Zoning Moratorium	17
Article 6 - Board of Appeals	
6.01 Purpose	18
6.02 Membership	18
6.03 Organization and Procedure	18
6.04 Procedure	18
6.05 Standards for Nonuse, Variances, Appeals, Exceptions and Expansions	19
6.06 Essential Services	21
6.07 Rules of Procedure	21
6.08 Expiration of Order	21
6.09 Appeal of Board Appeals' Decision	21
6.10 Stay of Proceedings	21
Article 7 - Site Plans	
7.01 Purpose	22
7.02 Uses Requiring Site Plan Approval	22
7.03 Site Plan Review Requirement	22
7.04 Site Plan - Information Required	22
7.05 Site Plan Review Process for Uses Other Than Special Uses	24
7.06 Site Plan Review Process for Special Uses	25
7.07 Criteria of Site Plan Review	25
7.08 Approvals and Conditions	26
7.09 Expiration, Reapplication, Revocation, and Amendment of Site Plans	26
7.10 Modification of Plan During Construction	26
Article 8 - Reserved	28

Article 9 - Reserved	28
Article 10 - Districts	
10.01 District	29
10.02 Scope of Regulations	29
10.03 Official Zoning Map	78
10.04 Annexation	29
10.05 Authority of Official Zoning Map	29
10.06 Interpretation of District Boundaries	29
10.07 Dimensional Requirements	29
Article 11 - R-1 Residential District	
11.01 Intent and Purpose	30
11.02 Uses Permitted by Right	30
11.03 Uses Permitted Under Special Use Permit	30
Article 12 - Reserved	31
Article 13 - C-1 Commercial District	
13.01 Intent and Purpose	32
13.02 Uses Permitted by Right	32
13.03 Uses Permitted Under Special Use Permit	32
Article 14 - Reserved	33
Article 15 - DD Waterfront and Lakebluffs Development District	
15.01 Intent and Purpose	34
15.02 Uses Permitted by Right	34
15.03 Uses Permitted Under Special Use Permit	34
Article 16 - PD Deep Water Port District	
16.01 Intent and Purpose	35
16.02 Uses Permitted by Right	35
16.03 Uses Permitted Under Special Use Permit	35
Article 17 - Reserved	36
Article 18 - Reserved	36
Article 19 - Schedule of Regulations	37
Article 20 - Regulations	
20.01 Application	38
20.02 Access to a Street	38
20.03 Accessory Buildings	38
20.04 Basement Dwellings	38
20.05 Condominium Projects	38
20.06 Corner Lot	39
20.07 Dwellings on More Than One Lot	39
20.08 Dwelling Units	39
20.09 Essential Public Services	40
20.10 Fences	40
20.11 Height Exceptions	41
20.12 Home Occupation Requirements	41
20.13 Keeping of Animals	41
20.14 Land Divisions	41

20.15	Landscaping and Buffers	43
20.16	Lighting	45
20.17	Manufactured Housing Communities	45
20.18	Mobile Homes	50
20.19	Moving of Structures	51
20.20	Off Street Parking and Loading	51
20.21	Outdoor Storage	53
20.22	Reserved	53
20.23	Principal Use	53
20.24	Private Road and Driveway Standards	53
20.25	Satellite Dish and Antenna	55
20.26	Sidewalks and Other Non-Motorized Ways	55
20.27	Signs	55
20.28	Solar Panels and Wind Generators	57
20.29	Solid Waste Enclosure (Non-Residential)	57
20.30	Storage of Recreational Vehicles	57
20.31	Street Vacations	58
20.32	Swimming Pools (Outdoor)	58
20.33	Temporary Structures and Uses	58
20.34	Uses Not Otherwise Included Within a District	59
20.35	Water Front Protection. Reserved.	59
20.36	Water Supply and Sewage Disposal Facilities	59
20.37	Wetland Regulations	59

Article 21 - Special Uses

21.01	Intent	61
21.02	Application, Review and Approval Procedures	61
21.03	Conditions of Approval	62
21.04	Phasing	62
21.05	Expiration; Revocation and Extensions	63
21.06	Amendments to Special Use Permits	63
21.07	Special Uses Expansions and Changes	63
21.08	Restrictions on Resubmittal of a Special Use Request	64
21.09	General Review Standards for All Special Uses	64
21.10	Special Use Specific Requirements	64
21.11	Automobile Wash	64
21.12	Automobile Service Stations	65
21.13	Auto Body Repair Shops	65
21.14	Boathouses. Reserved	65
21.15	Buildings Greater Than 5,000 Square Feet in Size	65
21.16	Campgrounds	65
21.17	Drive-in or Drive-thru Facilities or Establishments	66
21.18	Gasoline Service Stations	66
21.19	Golf Courses and Country Clubs	66
21.20	Hotels, Motels and Other Transient Lodging	66
21.21	Reserved	67
21.22	Junkyards	67
21.23	Marinas and Launching Ramps for Commercial Operations	67
21.24	Reserved	68
21.25	Planned Shopping Centers	68
21.26	Planned Unit Developments	68
21.27	Regulated Uses	70
21.28	Restaurants, Taverns or Other Eating and Drinking Establishments	72
21.29	Reserved	72
21.30	Short-Term Rentals	72
21.31	Reserved	72
21.32	Towers – Communication Systems (Television, Radio, Cell Phone)	72

21.33	Wind Energy Conversion System (WECS)	73
Article 22 - Nonconforming Uses, Structures and Lots		
22.01	Intent	75
22.02	Nonconforming Lots	75
22.03	Nonconforming Uses of Land	75
22.04	Nonconforming Structures	75
22.05	Nonconforming Uses of Structures and Land	75
22.06	Repairs and Maintenance	76
22.07	Change of Tenancy or Ownership	76
Article 23 - Miscellaneous Provisions		
23.01	Vested Rights	77
23.02	Severability	77
23.03	Effective Date	77
23.04	Repeal of Prior Ordinance	77
23.05	Savings Clause	77

THE VILLAGE OF ELBERTA ZONING ORDINANCE

AN ORDINANCE to establish zoning districts and regulations for the Village of Elberta pursuant to the provisions of Act 110 of the Public Acts of 2006, as amended, to set forth regulations, minimum standards and procedures for the use, size and protection of land and structures within such districts, to establish provisions for the administration and enforcement of this Ordinance, to prescribe penalties for the violation of this Ordinance and for such other purposes that may be set forth in this Ordinance.

ARTICLE 1 TITLE AND PURPOSE

1.01 **SHORT TITLE.** This Ordinance shall be known as the Village of Elberta Zoning Ordinance.

1.02 **PURPOSE.** The purpose of this Ordinance is to establish zoning districts in the Village of Elberta within which the use of land for recreation, residence, commercial trade and additional uses of land may be encouraged, regulated or prohibited and for such purposes dividing the Village into districts and area as deemed best suited to carry out the provisions of this Ordinance, and for each district designating or limiting the location, the height, number of stories 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 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 to protect and promote public health, safety and welfare.

1.03 **LEGAL BASIS.** This Ordinance is enacted, and shall be administered and may be amended, pursuant to the Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended.

1.04 **INTERPRETATION.** 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.

1.05 **SCOPE.** This Ordinance shall affect and regulate the use and occupancy of all land and every structure in the Village. Where this Ordinance imposes greater restrictions than those imposed or required by provisions of other laws, ordinances, private restrictions, covenants, deeds or other agreements, the provisions of this Ordinance shall control.

1.06 **ZONING AFFECTS ALL STRUCTURES AND LAND AND THE USE THEREOF.** No structure, land or premises shall be used or occupied and no building shall be erected, moved, reconstructed, extended or altered except in conformity with the regulations and provisions of this Ordinance.

ARTICLE 2 DEFINITIONS

2.01 RULES APPLYING TO THE TEXT. The following listed rules of construction shall apply to the text of this Ordinance:

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.

2.02 DEFINITIONS. In addition to the definitions provided under the Michigan Zoning Enabling Act, the following definitions shall apply:

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 one-family detached dwelling (granny flat) or above a garage (coach house) on the same lot as a one-family detached dwelling for use as a complete, independent living quarters, with provision for living, sleeping, bathing and cooking. Also known as a mother-in-law apartment or accessory apartment.

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, and gazebos, and which shall not include fences, hunting blinds, or signs.

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.

Amended 4/18/2013

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.

BASEMENT. That portion of the building that is partly or completely underground.

BED AND BREAKFAST ESTABLISHMENT. A use which is subordinate to the principal use of a dwelling unit as a single-family dwelling unit and a use in which transient guests are provided a sleeping room and breakfast in return for payment.

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. This shall include tents, awnings and vehicles situated on private property and used for purposes of a building, whether or not mounted on wheels.

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 SETBACK. The measurement from the property line to the nearest point of any portion of a building or structure, including eaves or overhangs.

CAMPGROUND. Means as defined in Part 125 of the Michigan Public Health Code.

CAMPSITE. Means the same as "site," as defined by the Administrative Rules for Part 125 of the Michigan Public Health Code.

CHILD CARE CENTER. A facility for the care of children, as defined by MCL 722.111(1)(a).

CLERK. The Village of Elberta Clerk.

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.

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 and/or multi-unit projects according to Public Act 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 and in the spaces and building parts used in common by all the unit owners. For the purposes of these Zoning Regulations, condominium terms shall be defined as follows:

- a. CONDOMINIUM ACT. MCL 559.01 *et seq*, as amended.
- b. CONDOMINIUM LOT. That portion of the land area of a site condominium project designed as the building envelope and intended to function similar to a platted subdivision lot for purposes of determining minimum yard setback requirements and other requirements set forth in Article 19, Schedule of Regulations.
- c. CONDOMINIUM SUBDIVISION PLAN. As defined in MCL 559.01 *et seq*, as amended.
- d. CONDOMINIUM UNIT. As defined in MCL 559.01 *et seq*, as amended.
- e. COMMON ELEMENTS. Portions of the condominium project other than the condominium units.
- f. MASTER DEED. As defined in MCL 559.01 *et seq*, as amended.
- g. SITE CONDOMINIUM PROJECT. A condominium project designed to function in a similar manner, or as an alternative to a platted subdivision.

COUNCIL. The Village of Elberta Council.

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.

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.

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.

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.

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.

FAMILY CHILD CARE HOME. Has the same meaning as in the Child Care Organizations Act, MCL 722.111.

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.

FINISHED GRADE. The proposed elevation of land of a site after completion of all site preparation work.

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.

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.

GROUP CHILD CARE HOME. Has the same meaning as in the Child Care Organizations Act, MCL 722.111.

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.

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.

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.

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. Screening to comply with Benzie County code.

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.

LAKE. A "lake" as defined by Part 202 of Michigan's Natural Resources and Environmental Protection Act, MCL 324.30101 et seq.

LAND USE PERMIT. See PERMITS.

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 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: CORNER, INTERIOR AND THROUGH.

1. Corner Lot is a lot that has at least 2 contiguous sides abutting upon a street.
2. Interior Lot is a lot other than a Corner Lot.
3. 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 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 or through lot, the lines separating the lot from each street.
2. **Lot Line, Rear.** Lot line, which is opposite the front line. In the case of a corner lot, the rear lot line may be opposite either front lot line, but there shall only be one designated rear lot line, the other lot line shall be designated a side lot line. The rear lot line shall be designated by the property owner.

In the case of a lot with side lot lines converging at the rear, 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.

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.

LOT WIDTH. Lot width shall be measured along the front line or street line.

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.

MANUFACTURED HOME. A structure, transportable in 1 or more sections, which is built on a chassis and designed to be used as a dwelling with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

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 Act and Manufactured Housing Commission Rules.

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. Shall have the same meaning as that in the Michigan Planning Enabling Act. MCL 125.3801, et seq, as amended.

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.

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.”

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.

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.

Amended 09/19/2013

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.

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.

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.

PARKING AREA. An off-street open area, the principal use of which is for the parking of automobiles, whether for compensation or not, as an accommodation to clients, customers, visitors or employees. Parking area shall include access drives within the actual parking area.

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.

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.

PRINCIPAL OR MAIN USE. The primary or predominant use of any lot or parcel.

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.

RECREATION VEHICLE. A vehicle-type portable structure without a permanent foundation that can be towed, hauled, or driven and is primarily designed as a temporary living accommodation for recreational, camping, and travel use and including, but not limited to, travel trailers, truck campers, camping trailers, and self propelled motor homes.

RIGHT-OF-WAY. A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, and other similar uses. Generally, the right of one to pass over the property of another.

SETBACK. The minimum distance by which a building or structure shall be separated from a lot line. As stated in the Building Setback definition, the measurement for a setback shall be taken from the property line to the

nearest point of any building or structure, including eaves or overhangs. The undeveloped land area that is within the required setback area is the yard. (See Yard Definitions.)

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 21 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.

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.

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.

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.

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.

VARIANCE. A modification of the literal provisions of the Zoning Ordinance granted by the Board of Appeals.

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.

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.

YARD. An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except as otherwise provided herein. The measurement of a yard shall be construed as the minimum horizontal distance between the lot line and the building line.

YARD - FRONT. A yard extending across the full width of the lot, the depth of which is the distance between the front property line and the nearest exterior point of a building or structure. 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 point of a building or structure.

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 point of a building or structure.

YARD -- WATERFRONT. A yard measured from the high water mark established by the State of Michigan to the nearest exterior point of a building or structure.

ZONING ADMINISTRATOR. The administrator of this Ordinance appointed by the Council.

ZONING BOARD OF APPEALS or BOARD OF APPEALS. The Village of Elberta Zoning Board of Appeals.

ARTICLE 3 – RESERVED

ARTICLE 4 --- RESERVED

**ARTICLE 5
ADMINISTRATION AND ENFORCEMENT**

5.01 ADMINISTRATION. The provisions of this Ordinance shall be administered by the Council in accordance with the Michigan Zoning Enabling Act.

5.02 ZONING ADMINISTRATOR. A zoning administrator shall be appointed by and on such terms as determined by the 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 Board of Appeals 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 provision of this Zoning Ordinance. The Council may also appoint a Deputy Zoning Administrator.

The Zoning Administrator shall have the following duties and powers.

1. The Zoning Administrator shall interpret all provisions of this Ordinance.
2. The Zoning Administrator shall enforce all provisions of this Ordinance and shall issue all necessary notices or orders to insure compliance with said provisions.
3. The Zoning Administrator shall receive applications for and issue permits when all the provisions of this Ordinance have been met.
4. 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 opinion to assist in making such inspections subject to the approval of the Council.
5. 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.
6. The Zoning Administrator shall keep official records of applications received, permits issued, fees collected, reports of inspections, and notices and orders issued.
7. The Zoning Administrator shall serve in an advisory role to the Planning Commission, the Board of Appeals, and the Council. The Zoning Administrator shall periodically or more, as necessary, attend Planning Commission, the Board of Appeals 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.
8. Before the Board of Appeals, the Zoning Administrator shall present case facts and explain decisions of the Zoning Administrator.
9. The Zoning Administrator shall identify, inventory, and monitor nonconforming uses.

5.03 LAND USE PERMITS AND PERMIT PROCESS.

1. No person shall erect, alter, raze, or move a structure or establish a new use or change in use for any parcel without a land use permit.
2. Applications for permits shall be made to the Zoning Administrator on a form provided by the Village 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. 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.
3. Nonconformities. A land use permit shall not be issued for any use or structure unless said use or structure and the lot on which situated meet all requirements of this Ordinance. However, a land use permit shall be issued for a use or structure and the lot on which situated on which one or more legal nonconformities exist. In such case, the land use permit shall clearly list each and every legal nonconformity. A permit shall not be issued for any use or structure and the lot on

- which situated if any illegal nonconformity exists thereon.
4. 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.
 5. 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.
 6. 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 so 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.
 6. Abandonment. An application for a permit shall be deemed to have been abandoned 6 months after the date of filing unless such application has been diligently prosecuted. The Zoning Administrator may, for reasonable cause, grant one or more extensions of time for additional periods not exceeding 90 days each.
 7. 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.
 8. Conditions. Issuance of a land use permit shall be subject to the following conditions:
 - a. No permit shall be issued until the required fees have been paid.
 - b. All work or use shall conform to the approved application and plans for which the permit has been issued and any approved amendments thereto.
 - c. All work or use shall conform to the approved final site plan, if required.
 9. Site Plan. An application for a land use permit shall be accompanied either by a site plan as required in this Section, or by a site plan as required under Article 7, whichever applies. If a site plan is not required under Article 7, a site plan shall be submitted as required in this Section. Such plan shall be drawn to scale, submitted in 2 copies, and shall provide the following information:
 - a. scale, date and north point;
 - b. location, shape and dimensions of the lot;
 - c. dimensioned location, outline, and dimensions of all existing and proposed structures and the location and extent of all uses not involving structures;
 - d. a clear description of existing and intended uses of all structures; and
 - e. additional information as required by the Zoning Administrator for purposes of determining compliance with this Ordinance.
 10. Waiver of Site Plan Requirements. The Zoning Administrator may waive portions of the foregoing requirements obviously not necessary for determination of compliance with this Ordinance.
 11. 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 continuously so displayed until all work is completed.
 12. Inspection. No land use permit will be issued by the Zoning Administrator without first conducting a site inspection. It is the responsibility of the applicant to have all property lines and building sites marked on the ground and to notify the Zoning Administrator of such. Notwithstanding the foregoing, the applicant is solely responsible for meeting the conditions and terms of the permit and this Ordinance.

5.04 APPLICATION FEES AND POSTING OF PERFORMANCE GUARANTEES.

1. 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 Council may from time to time adopt by resolution a fee schedule establishing basic zoning fees related to the following:
 - a. Land use permits.
 - b. Special use permits.
 - c. Requests for classification of property.
 - d. Appeals to or requests for interpretations by the Board of Appeals. Appeals and requests for interpretations initiated by the Council, the Planning Commission, or the Zoning Administrator shall not be subject to a zoning fee.
 - f. Requests for variances from the Board of Appeals.
 - g. Requests for rezoning of property by individual property owners or amendments to the zoning ordinance text. Rezoning of property or text amendments initiated by the Council, the Planning Commission, or the Zoning Administrator shall not be subject to a zoning fee.
 - h. Requests for a special meeting of the Planning Commission.
 - i. Any request for a change of use.
 - j. Any other activity that requires action by the Village under this Ordinance.

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 Board of Appeals, 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.

2. 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 insure 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.

5.05 REHEARING PROCESS.

1. The Planning Commission or Board of Appeals may grant a rehearing under exceptional circumstances for any decision made by it. Exceptional circumstances shall mean any of the following:
 - a. The applicant who brought the matter before the Planning Commission or Board of Appeals made misrepresentations concerning a material issue which was relied upon by the Planning Commission or Board of Appeals in reaching its decision.
 - b. There has been a material change in circumstances regarding the Planning Commission or Board of Appeals' findings of fact which occurred after the public hearing.
 - c. Legal counsel selected by the Council issues a written opinion which states that in the attorney's professional opinion the decision made by the Planning Commission or Board of Appeals or the procedure used in the matter was clearly erroneous.
2. A rehearing may be requested by the applicant or by the Zoning Administrator, or a rehearing may be granted by the Planning Commission or Board of Appeals on its own motion, pursuant to the following procedure:
 - a. 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 Board of Appeals regarding the decision for which the rehearing is being requested.

- b. A request for a rehearing made by the Zoning Administrator or a rehearing granted by the Planning Commission or Board of Appeals on its own motion may be granted at any time as long as the applicant has not been prejudiced by any delay.
- c. Whenever the Planning Commission or Board of Appeals considers granting a rehearing, it shall provide written notice consistent with Section 5.07.
- d. If the Planning Commission or Board of Appeals grants a rehearing, then the rehearing on the merits shall not be held until all notice requirements of Section 5.07 are met.

5.06 AMENDMENTS. Amendments or supplements to this Zoning Ordinance may be made from time to time in the manner provided by law.

- 1. 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 Council.
- 2. 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.
- 3. The procedure to be followed for initiating and processing an amendment by petition shall be as follows:
 - a. Each petition by 1 or more persons for an amendment shall be submitted by application to the Zoning Administrator on a standard form provided and shall be accompanied by the fee prescribed to cover administrative and publication costs.
 - b. 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. The Planning Commission may recommend any additions or modifications to the original amendment proposal. Rezoning Standards of Review:
 - i. The proposed use provided for in the district must be consistent with the uses called for in the Master Plan for that property.
 - ii. The proposed district and all of its allowed uses must be compatible with the surrounding area.
 - iii. Determination of whether the property is capable of being used for a use already permitted within the district.
 - iv. Whether the proposed use is reasonable within the district in which it is proposed.
 - v. Whether the current rezoning is unreasonable.
 - vi. Whether the proposed zoning promotes the Village's interests related to public health, safety and welfare.
 - c. After deliberation of any proposal, the Planning Commission shall conduct at least 1 public hearing, notice of which shall be consistent with Section 5.07.
 - d. Following such hearing, the Planning Commission shall consider the testimony taken at the public hearing and its own findings, and shall make a determination as to its decision. Thereafter, at any regular meeting or at any special meeting called therefore, the Council may ordain and enact into law the proposed amendment to the Zoning Ordinance.
 - e. In case a protest against a proposed amendment, supplement or change is presented, duly signed by the owners of 20% or more of the frontage proposed to be altered, or by owners of 20% of the frontage directly opposite the frontage proposed to be altered, such amendment shall not be passed except by a 3/4 vote of the sitting Council.
 - f. No application for a rezoning which has been denied by the 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 Council to be valid. A rehearing on the permit may be made in accordance with Section 5.05.

5.07 NOTICE.

- 1. 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.
2. 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.
 3. Content. All mail, personal and newspaper notices for public hearings shall:
 - a. Describe 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.
 - b. 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 exist 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.
 - c. When and where the request will be considered. Indicate the date, time and place of the public hearing(s).
 - d. 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.
 - e. Handicap access. Information concerning how handicap access will be accommodated if the meeting facility is not handicap accessible.
 4. Personal and Mailed Notice.
 - a. General. When the provisions of this Ordinance or state law require that personal or mailed notice be provided, notice shall be provided to:
 - i. The owners of property that is the subject of the request, and the applicant, if different than the owner(s) of the property.
 - ii. 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.
 - iii. All neighborhood organizations, public utility companies, railroads and other persons which have requested to receive notice pursuant to Section 5.07.
 - b. 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.
 5. 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:

- a. 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.
 - b. 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.
6. Registration to Receive Notice by Mail.
- a. 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 5.07.4.a.iii. The Clerk shall be responsible for providing this notification. Fees may be assessed for the provision of this notice, as established by the Council.
 - b. Requirements. The requesting party must provide the Clerk information on an official form proscribed by the Council to ensure notification can be made. All registered persons must re-register annually to continue to receive notification pursuant to this Section.

5.08 VIOLATIONS.

1. 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:
 - a. 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,
 - b. Issue a "Stop Work Order" if any one of the following apply:
 - i. The applicable permit or approval required under this Ordinance has not been issued.
 - ii. Work in progress does not comply with the applicable permit or approval granted under this Ordinance.
 - iii. 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.
 - iv. A permittee fails to pay any fees required by this Ordinance or any other applicable ordinance.

The stop work order shall contain the same information required for the notice of violation (paragraph 1.a, 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.
2. 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.
3. 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.
4. Nuisance Per Se. Any land, dwelling, building or structure which is erected, altered, razed 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 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.

5. Penalties. Any person who shall violate any provision of this Ordinance in any particular manner, or who fails to comply with any of the regulatory measures or conditions of the Board of Appeals adopted pursuant hereto, shall, upon conviction thereto, be fined not exceed \$100.00 or may be imprisoned not to exceed 90 days, or may be both fined and imprisoned in the discretion of the Court, and each day such violation continues shall be deemed a separate offense.

5.09 INTERPRETATION AND CONFLICT. In interpreting and applying the provisions of this Ordinance, the provisions shall be held to be the minimum requirements adopted for the promotion of the public safety, health, convenience, comfort, prosperity and general welfare. It is not intended by this Ordinance to interfere with, abrogate or annul any easements, covenants or other agreements between parties, provided, however, that where this Ordinance imposes a greater restriction upon the use of a building or land than existing easements, covenants or other agreements, the provisions of this Ordinance shall govern or control. Whenever the requirements of this Ordinance differ from the requirements of other lawfully adopted rules, regulations or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

5.10 DECLARATION OF ZONING MORATORIUM. Notwithstanding any other provision of this Zoning Ordinance, the Council may, by resolution, declare a moratorium on the issuance of any permit under this Ordinance, the processing of any permit application hereunder, the processing of any rezoning request, the processing of any site plan review, special land use request, or the processing of any other application made under this Ordinance. Such a moratorium may be declared by the Council only under the following conditions:

1. The 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;
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 resolution declaring the moratorium shall be published in a newspaper of general circulation within the Village;
5. The resolution 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 resolution declaring the moratorium shall be adopted by a vote of no fewer than 5 members of the Council.

**ARTICLE 6
BOARD OF APPEALS**

6.01 PURPOSE. The Board of Appeals shall perform its duties and exercise its powers as proved by the Michigan Zoning Enabling Act and in such a way that the objectives of this Ordinance may be achieved; that there shall be provided 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 secured.

6.02 MEMBERSHIP. The Council shall act as the Board of Appeals; provided, however, that one of the regular members of the Council is a member of the Planning Commission. All meetings of the Board of Appeals shall be held at the call of the President of the Council and at such times as the Board of Appeals may determine. All hearings conducted by the Board of Appeals shall be open to the public. 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. The Board of Appeals shall have the duties and powers set forth in the Michigan Zoning Enabling Act.

6.03 ORGANIZATION AND PROCEDURE. The Board of Appeals' organization and procedures shall be governed by the Michigan Zoning Enabling Act.

6.04 PROCEDURE.

1. Demand for appeal or other action to be considered by the Board of Appeals 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 demand must be submitted within 15 days of the decision being appealed.
2. The Zoning Administrator shall review the demand for appeal to determine if it is complete. If the demand 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 demand is within the Board of Appeals' jurisdiction. If the demand is complete, the Zoning Administrator shall schedule with the Board of Appeals a time for the appeal to be heard and shall prepare a written report on the demand to the Board of Appeals. The Zoning Administrator or the body from which the appeal was taken shall immediately transmit to the Board of Appeals all the documents constituting the record of the matter on which the appeal was taken.
3. Notice of the hearing on the appeal shall be given consistent with Section 5.07.
4. The hearing shall be held within 30 days of receipt of the demand for appeal. The hearing shall be held by the Board of Appeals and the Board of Appeals shall deliberate on the appeal consistent with the criteria set forth in this Article.
5. Votes required: A concurring vote of the majority of the appeals board shall be necessary to grant a variance or reverse any order, requirement, decision, or determination. The Board of Appeals may
 - a. 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
 - b. grant a variance.
6. The motion or minutes containing the decision of the Board of Appeals shall include:
 - a. the decision;
 - b. the reasons for the decision;
 - c. the findings of fact upon which the reasons are based; and
 - d. conditions of approval, if any. Such conditions shall be
 - i. Designed to protect natural resources, the health, safety, and welfare and the social and economic well-being of the people;
 - ii. Related to a valid exercise of the police power; and
 - iii. 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.
7. If a variance is approved with conditions, a performance guarantee, as provided for in Section

5.04, shall be deposited with the Clerk. The performance guarantee shall be rebated consistent with Section 5.04.

8. The decision of the Board of Appeals is final. If the decision is in the form of the minutes of the Board of Appeals, such minutes shall be final upon approval. If the decision is in the form of a motion, such shall be in writing and certified. The final decision shall be sent by registered mail (return receipt) to the Applicant.

6.05 STANDARDS FOR NONUSE_VARIANCES, APPEALS, EXCEPTIONS AND EXPANSIONS. 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 Board of Appeals, however, at least one of the applicable criteria must be found by the Board of Appeals.

1. Criteria Applicable to Nonuse Variances.
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. 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.
 - f. 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.
2. Criteria Applicable to Appeals. The Board of Appeals shall reverse an 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.
3. Exceptions, Interpretations of Zoning Map, and Exercise of Specified Powers: The Board of Appeals 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 Board of Appeals to act. Any exception shall be subject to such conditions as the Board of Appeals 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:
 - a. 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 actually on the ground varies from the street layout as shown on the map aforesaid.
 - b. Permit the modification of the automobile parking space or loading space requirements

where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements.

- c. 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.
 - d. Permit modification of obscuring wall requirements only when such modification will not adversely affect or be detrimental to surrounding or adjacent development.
 - e. Permit, upon proper application, the following character of temporary use, not otherwise permitted by Section 20.32, 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 Board of Appeals, in granting permits for the above temporary uses, shall do so under the following conditions:
 - i. 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.
 - ii. 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.
 - iii. 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 Board of Appeals.
 - iv. In classifying uses as not requiring capital improvement, the Board of Appeals 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.
 - v. The use shall be in harmony with the general character of the district.
 - vi. No temporary use permit shall be granted without first giving notice as required in Section 5.07. Further, the Board of Appeals shall seek the review and recommendation of the Planning Commission prior to the taking of any action.
4. Expansions and Substitutions.
- a. Where the Board of Appeals 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 yards, 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 Board of Appeals 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;
 - (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 Board of Appeals shall have authority to require modification of the

nonconformity, where such requirement is reasonable, as a condition for approval. The Board of Appeals 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 Board of Appeals. The Board of Appeals shall then act upon the request and return the site plan and the Board'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.

c. A nonconforming use of a structure may be substituted for another nonconforming use upon permission by the Board of Appeals, provided that no structural alterations are made, and provided further, that such other nonconforming use is more appropriate than the existing nonconforming use in the district in which it is located. The Board of Appeals may require appropriate conditions and safeguards in accordance with the intent of this Ordinance. A nonconforming use, when superseded by a more appropriate use as provided in this subsection, shall not thereafter be resumed.

5. Nothing contained herein shall be construed to give or grant to the Board of Appeals the power or authority to alter or change this Ordinance or the Zoning Map.

6.06 ESSENTIAL SERVICES. The Board of Appeals has the power to permit the erection and use of a building, or an addition to an existing building, or a public service corporation for public utility purposes, in any permitted district to a greater height or of larger area than the district requirement herein established, and permit the location in any use district of a public utility building, structure or use if the Board of Appeals shall find such use, height, area, building or structure reasonably necessary for the public convenience and service.

6.07 RULES OF PROCEDURE. The Board of Appeals may adopt additional rules and regulations to ensure proper conduct of its meetings.

6.08 EXPIRATION OF ORDER. No order of the Board of Appeals permitting a use of a building or premises shall be valid for a period longer than 1 year 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.

6.09 APPEAL OF BOARD OF APPEALS' DECISION. Any party aggrieved by a decision of the Board of Appeals may appeal to the Benzie County Circuit Court as provided in the Michigan Zoning Enabling Act. An appeal under this section shall be filed within 30 days after the Board of Appeals certifies its decision in writing or approves the minutes of its decision.

6.10 STAY OF PROCEEDINGS. An administrative appeal to the Board of Appeals and an appeal of a decision by the Board of Appeals 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 Board of Appeals 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 Board of Appeals or the circuit court. However, this section shall not apply to an administrative decision to take enforcement action for alleged violations of this Ordinance.

ARTICLE 7 SITE PLANS

7.01 **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, insure 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.

7.02 **USES REQUIRING SITE PLAN APPROVAL.** The following buildings, structures and uses require site plan approval:

1. All Special Uses.
2. All commercial uses that occupy an area greater than 500 square feet.
3. Contiguous parking areas containing 20 or more spaces.
4. Reclassification of non-conforming use.
5. Change of non-conforming use.
6. Residential developments containing 5 or more lots.
7. Condominium projects.
8. Any use within the Waterfront and Lakebluffs Development District.
9. Any use within the Deep Water Port District.
10. Expansion of existing structures and uses that would initially require site plan approval, unless the expansion of the occupied area is less than 200 square feet, in which case one expansion may be permitted without site plan approval.
11. Child Care Centers, Group Child Care Homes, and Family Child Care Homes.
12. Kennels.
13. Art and Craft Demonstration Establishments..
14. Farmers' Markets.
15. State licensed residential facilities licensed by a state agency for care and treatment of persons released from or assigned to adult correctional institutions.
16. Manufactured Housing Communities.

7.03 **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 Council. All Site Plan applications shall be on forms approved by the Village.

7.04 **SITE PLAN--- INFORMATION REQUIRED.**

1. Location map, address and legal description of the property, dimensions and area of the site.
2. If requested by the Planning Commission, a scaled black and white elevation drawing of all sides of the building and, if requested, 8 sets of 11" x 17" color elevations of all sides of the building depicting the color and character of all materials.
3. Name, address, phone number of the property owner and the applicant.
4. Title block, scale, north arrow, and date of plan.
5. Dimensional Requirements. The following should be taken into account 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, establishment of pleasant vistas, and arrangements conducive to enhancing the environmental quality of the site when developed minimizing the extent of impervious ground cover and minimizing the destruction of natural features which contribute to environmental quality. Dimensional requirements should include:
 - a. Location and exterior dimensions of proposed buildings/structures; outline; floor area; distances between buildings/structures; height in feet and stories; finished floor elevations and number and type of dwelling units (where applicable).
 - b. 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. Except for large parking lots, driveways shall be limited to 1 per development.

- c. Proposed parking location and lot dimensions, space and aisle dimensions, angles of spaces, surface type and total number of spaces.
6. Location and size of open areas and recreation areas, if applicable; percentage of open areas or recreational areas if applicable.
7. 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.
8. 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.
9. Location, width, and surface of proposed sidewalks and pedestrian ways.
10. 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.
11. Adjacent land uses and zoning, location of adjacent buildings, drives and streets.
12. If requested by the Planning Commission, location and area of development phases, building program for each phase, projected schedule of development by phase.
13. Location and width of all existing and proposed easements on the site.
14. 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.
15. 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 showing surface, base, and sub-surface materials; angles of spaces.
16. Location and size of proposed improvements of open spaces and recreation areas, and maintenance provisions for such areas.
17. Locations, width, and surface of proposed bike paths, sidewalks and pedestrian ways.
18. Location and type of proposed screens and fences; height, typical elevation and vertical section of screens, showing materials and dimensions.
19. All adjacent property owned or controlled by the applicant or owner of the subject property.
20. If requested by the Planning Commission, existing topographic elevations at 2 foot contour intervals. Indicate the direction of drainage flow.
21. If requested by the Planning Commission, location and elevations of existing water courses and water bodies, including county drains and surface drainage ways, floodplains and wetlands.
22. 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.
23. Description and location of any existing or proposed outdoor storage facility (above ground and below ground storage).
24. Description and location of on-site wastewater treatment and disposal systems.
25. 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.
26. 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.
27. Layout, size of lines, invert, 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. If on-site water and sewer facilities are to be used, a letter of approval of same, or a copy of the permit from the Benzie County Health Department shall be submitted prior to approval of the site plan. Detention and retention basin maintenance schedules shall be included on the site plan prior to approval.
28. Landscape plan showing location, size, species and diversity of plant materials.

29. 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.
30. Location, dimensions and materials of proposed retaining walls.
31. Location, type, fixture detail, direction, height and photometric of outside lighting and/or decorative street lighting shall be shown on the plan.
32. Right-of-way expansion where applicable; reservation or dedication of a right-of-way is to be clearly noted.
33. If required by the Planning Commission a Community Impact Statement. This document should include the following components, as determined by the Planning Commission:
 - a. Traffic Impact Study: 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. Natural Resources Analysis: An evaluation of the effect on existing natural features, including wetlands, floodplains, ponds, lakes, drainageways, steep slopes, endangered species, wildlife habitat, or woodlots.
 - c. Capital Facilities Analysis: 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. Site Performance Report: 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. Community Services Analysis: 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.
34. All information required by any other provision of this Ordinance governing the land use or structure for which site plan approval is sought.

7.05 SITE PLAN REVIEW PROCESS FOR USES OTHER THAN SPECIAL USES.

1. An Applicant for Site Plan review shall submit an application for review, on a form approved by the Village, 8 sets of the site plan drawing, and pay the required fee to the Zoning Administrator. The application presented for consideration shall contain the following:
 - a. Name of proposed development.
 - b. Common description, complete legal description and address (if available) of the property.
 - c. Dimensions of land: width, length, acreage, and frontage.
 - d. Existing zoning classification and zoning of all adjacent properties.
 - e. Proposed use of the land.
 - f. Name, address, and phone number of: Firm or individual who prepared the application; Legal owner of the property; and Applicant (including basis of representation.)
 - g. Signature of the legal owner and the Applicant.
2. 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.
3. Planning Commission Public Hearing.
 - a. 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.

- b. A notice of the public hearing shall be published and sent in accordance with Section 5.07.
- c. The Planning Commission shall conduct the required public hearing.
- d. The Planning Commission shall review the application in terms of the requirements criteria in Section 7.07.
- e. Following adequate review of the application, the Planning Commission shall either approve, approve with conditions (as described below in Section 7.08) 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.

7.06 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 21.

7.07 CRITERIA OF SITE PLAN REVIEW. 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:

1. That the applicant may legally apply for site plan review.
2. That all required information has been provided.
3. 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.
4. 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.
5. 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.
6. That the movement of vehicular and pedestrian traffic within the site and in relation to access streets will be safe and convenient.
7. 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.
8. That the site plan shows the use will be adequately served by necessary improvements, including but not limited to, sewage collection and treatment, portable water supply, storm drainage, lighting, roads and parking.
9. 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.
10. 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.
11. That the proposed use will be harmonious to the surrounding neighborhood.
12. That the location of buildings, outside storage 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.
13. 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.

14. 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.
15. 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 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. If the site plan involves a special use, that it meets the requirements of Article 21, as evidence by a Special Use permit.

7.08 APPROVALS AND CONDITIONS.

1. 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.
2. Conditions. The Planning Commission, Council or Board of Appeals 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:
 - a. 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.
 - b. Be related to the valid exercise of the police power and purposes, which are affected, by the proposed use or activity.
 - c. 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.

7.09 EXPIRATION, REAPPLICATION, REVOCATION, AND AMENDMENT OF SITE PLANS. The provisions for expiration, reapplication, revocation, and amendment of Site Plan approval shall be the same as the procedures for expiration, reapplication, revocation and amendment for a Special Use. Those procedures are set forth in Article 21. However, the final decision on a major amendment to a site plan that is not related to a Special Use shall be made by the Planning Commission instead of the Council.

7.10 MODIFICATION OF PLAN DURING CONSTRUCTION. 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 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 Council, as the case may be.

ARTICLE 8 -- RESERVED

ARTICLE 9 -- RESERVED

**ARTICLE 10
DISTRICTS**

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

R-1	Residential District
C-1	Commercial District
DD	Waterfront and Lakebluffs Development District
PD	Deep Water Point District

10.02 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 is permitted in the district in which such building or premises is located.

10.03 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.

10.04. ANNEXATION. Any land that is annexed to the Village shall be classified R-1 Residential District immediately upon annexation to the Village and shall remain as such until the land is officially rezoned. If the R-1 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.

10.05 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.

10.06 INTERPRETATION OF DISTRICT BOUNDARIES.

1. Where uncertainty exists with respect to the boundaries of any of the districts indicated on the official Zoning Map, the following rules shall apply:
 - a. Where boundaries indicated as approximately following streets or highways, the centerline of the public right-of-way shall be construed to be such boundaries.
 - b. Where boundaries indicated as approximately following Village boundary lines or following lot lines shall be construed as following said lines.
 - c. Where boundaries indicated as approximately parallel to the center lines of public right-of-ways shall be construed as being parallel thereto and at such distance therefrom as indicated by given distance or scaled dimension on the official Zoning Map.
2. On an unsubdivided property, or where a district property divides a lot, the location of such boundary, unless shown by dimensions on the Zoning Map, shall be determined by the use of the map scale shown on the map. If there is a disagreement about this measurement, then it shall be reviewed and determined by the Council.
3. Whenever any road, alley, or other public right-of-way within the Village is vacated, then the road, alley or public right-of-way or portion thereof, shall automatically be classified in the same zoning district as to the property it attaches.

10.07 DIMENSIONAL REQUIREMENTS. The dimensional requirements of Article 19 shall apply to each district.

ARTICLE 11
R-1 RESIDENTIAL DISTRICT

11.01 INTENT AND PURPOSE. This district is intended for single-family and two-family residential uses, together with schools, churches, 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, roofline slopes, porches, windows, and pedestrian and vehicular access location.

11.02 USES PERMITTED BY RIGHT. The following uses are permitted by right within a R-1 District:

1. Detached Single Family and Two Family Dwellings and Accessory Uses if there is a detached residential dwelling.
2. Home Occupations.
3. Public Parks and Recreation Areas.
4. Manufactured Housing Communities.
5. State licensed residential facilities.

11.03 USES PERMITTED UNDER SPECIAL USE PERMIT. The following uses of land and building may be permitted by obtaining a Special Use Permit in accordance with the provisions of Article 21.

1. Churches.
2. Private Recreation Facilities.
3. Bed and Breakfast Establishments.

ARTICLE 12 – RESERVED

ARTICLE 13
C-1 COMMERCIAL DISTRICT

13.01 INTENT AND PURPOSE. It is 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, roofline slope, porches and windows, and pedestrian and vehicular access locations.

13.02 USES PERMITTED BY RIGHT. The following uses are permitted by right within a C-1 District.

1. Any use permitted by right in the R-1 District, except for Manufactured Housing Communities.
2. Resort retail, whose principal activity is the sale of notions, souvenirs, gifts, antiques, artwork, books, confections, flowers or plants, and clothing.
3. Office building for any of the following occupations: attorneys, architects, engineers, accountants, insurance agents, artists, doctors, dentists and similar occupations.
4. Retail food establishments that supply groceries, fruits, vegetables, meats, dairy products, baked goods, confections or similar commodities for consumption off the premises
5. Retail businesses, such as, but not limited to: drug, variety, dry goods, clothing, notions, music, books, hardware or furniture stores which supply commodities on the premises. Formula-based retail operations are only permitted with the approval of a special use permit.
6. Personal service establishments, which perform services on the premises, such as, but not limited to: barber, beauty or health shops, repair shops (i.e., shoes, radio, television, jewelry), photographic studios and self service laundries and dry cleaning.
7. Banks and other financial corporation offices.
8. Commercial schools including art, music, dance, business, professional and trade.
9. Funeral homes and mortuaries.
10. Veterinary hospitals and kennels.

Amended 04/18/2013

13.03 USES PERMITTED UNDER SPECIAL USE PERMIT. The following uses of land and structures may be permitted by obtaining a Special Use Permit in accordance with the provisions cited in Article 21.

1. All special uses specified in any R District.
2. Automobile wash.
3. Automobile service stations.
4. Auto body repair shops.
5. Campgrounds.
6. Commercial recreation facilities.
7. Buildings with a minimum floor area (measured from the outside walls of the first floor) greater than 5,000 square feet.
7. Drive-in or drive-thru facilities or establishments.
8. Gasoline Service Stations.
9. Hotels, Motels and Other Transient Lodging.
10. Junk Yards.
11. Marinas and Launching Ramps for Commercial Operations.
7. Restaurants, taverns and other eating establishments, which provide food and/or drink and/or entertainment on the premises.
8. Planned Shopping Centers.
9. Planned Unit Developments.
10. Formula-based retail operations.
11. Short Term Rentals.
- 12. Apartments**

ARTICLE 14 – RESERVED

ARTICLE 15
DD WATERFRONT AND LAKEBLUFFS DEVELOPMENT DISTRICT

15.01 INTENT AND PURPOSE. This district is designed and intended to establish an area for residential and commercial land uses in the Village, that recognizes the unique features of the Elberta Coastal environment, whereby flexibility is granted from the strict application of the zoning district requirements. This will 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 and residential uses, allowing a development plan which maximizes the environmental protection of the coastal environment and provides the substantial opportunity for public access to the waters edge.

15.02 USES PERMITTED BY RIGHT. The following are the principal permitted uses by right within a DD District: All uses permitted by right within the R-1 District, except for Manufactured Housing Communities.

15.03 USES PERMITTED UNDER SPECIAL USE PERMIT. The following uses of land and buildings may be permitted by obtaining a Special Use Permit in accordance with the provisions cited in Article 21.

1. All special uses specified in the R-1 District and in the C-1 District.
2. All uses permitted by right in the C-1 District.
3. Drive-in or Drive-Thru Facilities or Establishments.
4. Golf Courses and Country Clubs.
5. Marinas and Launching Ramps for Commercial Operations, boat liveries, whether commercial or recreational in nature, and facilities designed to retain marine pleasure craft.
6. Marine vessel storage or repair facilities within completely enclosed buildings.
7. Marine vessel sales outlets.
8. Outdoor recreational or public amusement facilities, including tourism facilities, historical displays and other facilities.
9. Planned Shopping Centers.
10. Towers – Communication Systems.
11. Wind Energy Conversion Systems.

ARTICLE 16
PD DEEP WATER PORT DISTRICT

16.01 INTENT AND PURPOSE. This district is designed and intended to establish an area for residential and commercial land uses in the Village that recognizes the unique features of the Elberta Deep Water Port, whereby flexibility is granted from the strict application of the zoning district requirements. This will 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 and residential 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 waters edge.

16.02 USES PERMITTED BY RIGHT. The following are the principal permitted uses by right within the PD District.

1. A single building for any use permitted in the R-1 or C-1 District, except for Manufactured Housing Communities.
2. Deep draft marine vessel operations and support facilities which are recreational or commercial tourism based in nature.

16.03 USES PERMITTED UNDER SPECIAL USE PERMIT. The following uses of land and buildings may be permitted by obtaining a Special Use Permit in accordance with the provisions cited in Article 21.

1. All special uses specified in the R-1 and C-1 Districts, except for Planned Shopping Centers.
2. Marinas and Launching Ramps for Commercial Operations, boat liveries, whether commercial or recreational in nature, and facilities designed to retail marine pleasure craft.
3. Marine vessel storage or repair facilities within completely enclosed buildings.
4. Marine vessel sales outlets.
5. Outdoor recreational or public amusement facilities, including tourism facilities, historical displays and other facilities.

ARTICLE 17 --- RESERVED

ARTICLE 18 --- RESERVED

ARTICLE 19 SCHEDULE OF REGULATIONS

Amended 04/19/2012

DISTRICT	MINIMUM LOT SIZE		MAXIMUM BUILDING HEIGHT (e)		PRINCIPAL STRUCTURE MINIMUM YARD SETBACK (in feet)			MINIMUM FLOOR AREA (per unit and in sq. feet)	MAXIMUM LOT COVERAGE BY ALL BUILDINGS
	Sq. Feet	Width	Stories	Feet	Front	Side	Rear		
R-1 Residential	<u>4,800(f)</u>		2.5	30	<u>20</u>	10(d)	<u>10</u>	800 (a)	50%
C-1 Commercial	<u>2,500</u>		2.5	40	<u>0</u>	<u>0</u>	<u>20</u>		<u>90%</u>
DD Waterfront & Lakebluffs Development	43,560		2.5	35	25	10(b)	10(b)	--	33%(h)
PD Deep Water Port	43,560		2.5	35	25	10(b)	20(b)	--	50%(h)

Schedule of Regulation Footnotes:

- (a) Exclusive of unenclosed porches, garages, basements, and patios.
- (b) When abutting residential it shall be 40' minimum.
- (c) Or even with existing buildings.
- (d) On corner lots must be 20'**
- (e) Height of Buildings or Structures. The limitations affecting the height of structures shall not apply to the following appurtenant structures, provided they comply with all other provisions of this or any other applicable ordinance: chimneys, smokestacks, church spires, flag poles, penthouses for mechanical equipment and water tanks. The maximum building height may be increased upon application to and finding by the Village that such increased height will not adversely affect existing and surrounding adjacent properties, that the structure is fully protected with an approved fire suppression system, that fire retardant materials are used for roof framing and sheathing, and that the building or structure is constructed with approved fire fighting access ways as determined by the State Fire Marshall and in accordance with applicable building codes.
- (f) **Deleted**
- (g) Whenever property zoned for commercial use has a contiguous border with a residential district, the Village may require that no storage, driveway, parking area, building, sign, commercial activity be allowed in a setback area established by the Village. The Village may further require that trees, shrubs, grasses, screening fences, berms or other landscaping be placed in the above described area abutting this residential district. In determining the appropriate setback and screening requirement the Village shall consider but is not limited to the following: the proposed use of the property; noise, odors, vehicle traffic, light, vibration, and dirt caused by the proposed use; size, construction, appearances, and exterior lighting of buildings, structures, parking areas or driveways; exterior storage, including storage of waste or trash; and lot size and natural barriers.
- (h) Commercial space usage shall be limited to no more than 50% of the total building area within a mixed use building or structure housing both residential and/or overnight rental accommodations and allowable uses in the Commercial District.

Amended 09/19/2013

- (i) Occupancy load for apartments and multi-family dwellings shall not be less than 200 square feet per occupant.**

ARTICLE 20 REGULATIONS

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

20.02 ACCESS TO A STREET. Any lot created after the effective date of this Ordinance shall have frontage on a public or private street, except as may be approved as a planned unit development in accordance with the provisions of this Ordinance.

20.03 ACCESSORY BUILDINGS. Authorized accessory buildings may be erected as part of the principal building or may be connected to it by a roofed-over porch, patio, 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. An accessory building not attached and not made a part of the principal building shall:

1. Not be nearer than 10 feet from any other separate structure on the same lot;
2. Not be erected in any minimum side yard setback nor in any front yard;
3. Not occupy more than 25% of a required rear yard;
4. Not exceed 1 story or 14 feet in height, nor exceed the ground floor area of the main building if within a residential district; and
5. Not be closer to the side yard lot line than the side yard setback of the principal building on a corner lot within a residential district.

20.04 BASEMENT DWELLINGS. The use of any basement as a residence or dwelling unit is prohibited in all districts. This section shall not exclude underground homes or other similar dwelling units from locating in the Village.

20.05 CONDOMINIUM PROJECTS. The intent of this Section is to provide regulatory standards for condominiums and site condominiums similar to those required for projects developed under other forms of ownership. This section is not intended to prohibit or treat a proposed or existing condominium project different than a project developed under another form of ownership.

1. Application Requirements.
 - a. Definitions contained in Article 2 are intended to make comparison possible between the definitions of terms in the Zoning Ordinance for lots, conventional platted lots and subdivisions and to ensure that the standards in the Zoning Ordinance are properly and uniformly applied to condominiums and site condominium projects.
 - b. Site condominium projects in residential districts shall comply with all setback, height, coverage and area restrictions in Article 19 of the Schedule of Regulations in the same manner as these standards would be applied to lots and platted lots in a subdivision. ***Site condominium projects also shall conform to the design layout and improvement standards in the Village's Subdivision Control Ordinance, however, the plat review and approval process required by the Subdivision Control Ordinance shall not apply to site condominiums. Multiple-family residential buildings shall meet the standards for multiple-family developments.***
 - c. The relocation of boundaries as defined in Section 148 of the Condominium Act shall conform to all setback requirements of Article 19 for the district in which the project is located, shall be submitted to the Planning Commission for review and approval and these requirements shall be made a part of the bylaws and recorded in the master deed.
2. Approval of Plans. Prior to issuance of a land use permit, all condominium plans must be approved by the Planning Commission following the site plan review process in Article 7 of this Zoning Ordinance. In reviewing the project, the Planning Commission shall consult with attorneys, planners and engineers that it deems necessary regarding the adequacy of the master deed, deed restrictions, utility systems, streets, project design and layout and compliance with the Condominium Act.
3. Streets and Necessary Easements. Condominium projects with streets shall comply with all street requirements found in the Village Ordinances. Projects which connect to public streets

shall have the project street dedicated to the public. The condominium plan shall include all easements granted to the Village necessary to construct, operate, inspect, maintain, repair, alter, replace and/or remove pipelines, mains, conduits and other installations of a similar character for the purpose providing public utilities. Public utilities shall include, but not limited to, conveyance of sewage, water and storm water runoff across, through and under the property subject to such easement, and excavating and filling ditches and trenches necessary for the location of such structures.

4. Subdivision of Unit Sites. Subdivision of condominium unit sites or lots is permitted subject to Planning Commission approval and the submittal of the amended bylaws and master deed to determine the effect of the subdivision on conditions of zoning or site plan approval, and shall be made as part of the bylaws and recorded as part of the master deed.
5. Water and Wastewater. The condominium project shall comply with and meet all federal, state and county standards for a fresh water system and waste water disposal.
6. Master Deed. The project developer shall furnish the Zoning Administrator with 1 copy of the proposed consolidated master deed, 1 copy of bylaws and 2 copies of the proposed plans. The master deed and bylaws shall be reviewed for compliance with the Village's Code of Ordinances and to ensure that an assessment mechanism has been included to guarantee the financing of adequate maintenance of common elements. Master Deeds submitted to the Village for review shall not permit contraction of the condominium (whereby co-owners can withdraw from the condominium and responsibility for maintenance of common elements) without re-submittal of the master deed and bylaws to the Planning Commission for review and approval. Fees for these reviews shall be as established, from time to time, by the Council.
7. Final Bylaws, Consolidated Master Deed and Site Plan. Upon approval of the condominium site plan, the applicant shall furnish the Clerk a copy of the bylaws and consolidated master deed. A site plan shall be provided on a mylar sheet of at least 24 inches by 36 inches.

20.06 CORNER LOT. Where a lot is bounded by two intersecting streets, the front yard requirements shall be met on one abutting street only, with the front yard being the street running north-south or as otherwise determined by the Zoning Administrator.

20.07. DWELLINGS ON MORE THAN ONE LOT. If a structure is to be located on a parcel of land containing 2 or more lots under single ownership, the entire parcel shall be considered a "lot" for purposes of this Ordinance. If a residential development contains 5 or more lots, site plan review is required under Article 7.

Amended 02/18/2016

20.08 DWELLING UNITS. All dwelling units located outside of a **Mobile Home Park** shall comply with the following conditions (does not apply to accessory dwelling units):

1. All dwelling units shall **provide a minimum height between the floor and ceiling of seven feet six inches (7'-6")**; or if a mobile home, it shall meet the requirements of **the United States Department of Housing and Urban Development Regulations, entitle Mobile Home Construction and Safety Standards, effective June 15, 1976 as amended.**
2. There shall be a minimum permitted size of 800 square feet.
3. **The minimum width of any single dwelling unit shall be twenty-two (22) feet for at least sixty-seven (67) percent of its length, measured between the exterior part of the walls having the greatest length.**
4. **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.**
 - a. **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.

- b. The dwelling shall meet or exceed all applicable roof snow load and strength requirements.**
5. All dwellings **without basements, except slab on grade construction, shall provide a crawl space below the entire floor of the dwelling four (4) feet in depth.**
 6. 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 Ordinances, a dwelling shall have a septic system and water well approved by the Benzie-Leelanau County Health Department.
 7. All dwellings **where there exists an elevation differential of more than eight (8) inches between any door and the surrounding grade shall provide steps or porch in accordance with Michigan State Construction Code.**
 8. **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 requires of the Michigan Construction Code and be aesthetically compatible in design and appearance with the original structure.**
 9. **All dwellings must provide a minimum of two (2) points of ingress and egress.**
 10. **A minimum of one hundred (100) square feet of enclosed storage space, excluding closets, shall be provided for each dwelling. Said enclosed storage space may consist of a basement, garage, shed or other structure as approved by the Administrator.**
 11. **Prior to issuance of a building permit for any single dwelling unit, construction plans referencing exterior elevation and exterior details or structure along with plot plan adequate to illustrate compliance with the requirements of this ordinance shall be submitted to the Administrator. If there dwelling unit is a mobile home, there shall also be submitted adequate evidence to assure that the dwelling complies with the standards applicable to mobile homes set forth in this section.**

20.09 ESSENTIAL PUBLIC SERVICES. It shall be lawful for public utilities, municipal departments or commissions to erect, construct, alter or maintain essential public services including buildings, reasonably necessary for the furnishing of adequate services for the public health, safety and general welfare, in any zone, area or use district of the Village; provided that the erection or construction of any or all above-grade construction consisting of necessary buildings and structures shall be designed and erected to conform harmoniously with the general architecture and plan of such district in which it is to be erected and shall be subject to the approval of the Board of Appeals.

20.10 FENCES. Fences are permitted subject to the following regulations:

1. General Fence Requirements:
 - a. Fence height shall be measured from the surrounding grade at every point along the fence line.
 - b. Chicken wire fences are strictly prohibited.
 - c. Fences that have one finished and one decorative side shall be erected with the finished or decorative side facing to the exterior of the lot to which the fence is associated.
 - d. Any reconstruction of a non-conforming fence shall require a permit and must meet current ordinance standards, unless otherwise specified in the ordinance.
 - e. There shall be a maximum of 1 fence per property line.
 - f. Fence ownership shall be determined by the fence permit applicant.
2. Location in front yards*: Fences of an ornamental nature may be located in a front yard of any lot of record up to a height of 36 inches, provided that for corner lots adequate clear vision is provided as determined by the Zoning Administrator. No front yard fence shall be erected closer than 6 inches to any public sidewalk or the property line, and shall not cross any public rights-of-way. Front yard fences are to be ornamental fences of approved materials, of a design as to be non-sight obscuring and of a fence type listed below:
 - a. Post and rail.
 - b. Split rail.
 - c. Picket.
 - d. Wrought iron.
 - e. Other types of ornamental fences must be approved by the Planning Commission prior to placement in the front yard area.

**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. Four (4) foot fencing is not permitted past the rear building line.
3. Side Yard fence standards: Fences may be located in the side yard up to a height of 6 feet, 4 feet for corner lots. Fences shall only extend along the side property line equal distance to the length of the principle building and not extend beyond the front building line. A 6 foot fence may extend perpendicular from the property line to the front building line.
4. Rear Yard Fence standards: Privacy fences may be erected in a rear or side yard on any lot of record provided the privacy fence does not extend beyond the rear building line. Privacy fences shall be a maximum of 6 feet in height measured from the surrounding grade at every point along the fence line. All other fence types are permitted.
5. Prohibition in right-of way: Fences shall not be erected in public rights-of-way.
6. Restrictions: Fences shall not contain 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. Fences protecting public utilities and public property may use barbed wire or other security fencing measures.
7. Maintenance: All fences shall be maintained in a good condition, in an upright position and shall not constitute an unreasonable hazard. Any fence, which is not maintained, as determined by the Zoning Administrator, shall be removed or replaced (any required fence shall be replaced) at the owner's expense.
8. Invisible Fences: Use of an invisible fence shall be identified with a posted sign clearly visible

from the street or other public right-of-way.

20.11 HEIGHT EXCEPTIONS. The following structural appurtenances shall be permitted to exceed the height limitations for authorized uses.

1. 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.
2. Appurtenances to mechanical or structural functions such as chimneys and smokestacks, water tanks, ventilators and communications towers provided the Board of Appeals approves such appurtenances.

20.12 HOME OCCUPATION REQUIREMENTS. All home occupations, as defined in Article 2, shall meet all of the following conditions:

1. The home occupation shall be operated in its entirety within the principal dwelling or a residential type garage or within any other accessory building located on the lot.
2. 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.
3. 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.
4. 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.
5. The occupation shall not involve any alteration or construction not customarily found in dwellings.
6. 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.
7. No sale or rental of goods shall be allowed on the premises except as secondary and incidental to the furnishing of a service.

20.13 KEEPING OF ANIMALS. It shall be unlawful to keep animals that are injurious to the health, welfare and safety of the public.

20.14 LAND DIVISIONS.

1. This Section is to carry out the provisions of the State Land Division Act (1967 PA 288, as amended, formerly known as the Subdivision Control Act) (LDA), to prevent the creation of parcels of property which do not comply with applicable ordinances and the LDA, to ensure conformance with the requirements of the Village Zoning Ordinance, to prevent the creation of unbuildable lots, to protect purchasers of newly created lots, to minimize potential boundary disputes, to maintain orderly development of the community, and otherwise to provide for the health, safety and welfare of the residents and property owners of the Village by establishing reasonable standards for prior review and approval of lot divisions within the Village.
2. Prior Approval Requirement for Lot Divisions. Land in the Village, including any platted lot, out lot, or other parcel of land within a recorded plat, shall not be divided or combined with another parcel or lot unless such division or combination is approved by the Village Council. The creation of any other lot after the effective date of this Ordinance shall also require the approval of the Village Council.
3. Application Procedures. An applicant for a land or lot division or combination shall file an application for said division or combination with the Zoning Administrator together with the application fee in such amount as shall be established from time to time by resolution of the Village Council. An application for a proposed division or combination shall not be considered filed with the Village, nor shall the time period for review and approval of the application commence until all of the requirements for an application have been met. Such application shall

contain all of the following:

- a. A completed application on such form required and provided by the Village.
 - b. The zoning district in which the proposed parcel(s) or lot(s) is/are located and a full description of the minimum dimensional requirements of that district for lot size, minimum frontage required, setbacks, coverage requirements, etc.
 - c. Proof of fee ownership of the land proposed to be divided or combined.
 - d. An adequate and accurate legal description of the proposed parcel(s) or lot(s) to be created, and a drawing or survey showing:
 - i. the size of the proposed parcel(s) or lot(s) to be created and the boundaries thereof;
 - ii. the size of the remainder of the parcel or lot from which the proposed parcel(s) or lot(s) is split;
 - iii. public utility easements;
 - iv. the location of all existing structures and other land improvements on the proposed parcel(s) or lot (s);
 - v. the accessibility of the parcels for vehicular traffic and utilities from existing public roads.

If the drawing provided is other than a survey map, the application shall not be deemed complete until the Zoning Administrator satisfied that the drawing accurately depicts the land proposed to be divided.
 - e. A copy of the recorded plat or other official maps showing the size of parcels in the vicinity of the parcel proposed for division.
 - f. The purpose of the proposed division or combination;
 - g. Whether or not public sanitary sewer, public storm sewer or public water exists, available or proposed for each parcel or lot created by the proposed division.
 - h. If the parcel proposed to be split is unplatted, the history and specifications of any previous divisions of land of which the proposed division was a part sufficient to establish the parcel to be divided was lawfully in existence as of March 31, 1997, the effective date of the LDA.
 - i. Proof that all due and payable taxes or installments of special assessments pertaining to the land proposed to be divided or combined are paid in full.
4. Procedure for Review of Land Division Application. The Zoning Administrator shall review the application and shall make a recommendation to the Planning Commission for a recommendation for approval or disapproval of the proposed division or combination to be made to the Council. The Planning Commission, with the assistance of those attorneys, planners, and engineers that it deems necessary, shall make such their recommendations based on their determination of the compliance of the proposed division or combination with the following requirements:
- a. The proposed parcel(s) or lot(s), as divided or combined, shall fully conform to or, if presently nonconforming, will be more conforming to the requirements of this Ordinance.
 - b. The property remaining after the proposed division or combination has occurred constitutes a lot or parcel which conforms fully with the requirements of the zoning district in which it is located or, if presently nonconforming, will be more conforming to the requirements of this Ordinance.
 - c. A lot in a recorded plat is not being divided into more than 4 parcel(s) or lot(s) as a result of the proposed division.
 - d. The division of an unplatted parcel of land complied with the requirements of the LDA.
 - e. Any lot resulting from the proposed division or combination must meet the minimum dimensional requirements of the zoning district in which it is located.
 - f. Any lot resulting from the proposed division or combination must meet the minimum buildable area requirements of the zoning district in which it is located.
 - g. The division or combination shall not result in the creation of a flag lot except upon a finding by the Council that, due to limited street frontage, there is no other way to gain access to a parcel or lot which is otherwise buildable under the requirements of the zoning district in which it is located. In such cases, the flag lot created must have at least

20 feet of frontage on a public street and it must be separated from another flag lot by a distance equal to the minimum lot width of the zoning district in which the flag lot is located. In addition the main (non-flag) portion of the lot shall meet the front, side and rear yard setback requirements of the zoning district in which it is located.

- h. The proposed division shall not create parcels which are irregular in shape unless the irregularity is due to a pre-existing natural feature such as a wetland, waterway, or woodland area.
5. Procedure for Approval of Land Division Application
- a. Upon receipt of the recommendation of the Planning Commission, the Council shall consider the request for the land or lot division or combination. Before approving a proposed division or combination, the Council shall find that all of the requirements of subsection 20.14.4 and any applicable provisions of the LDA have been met. In doing so, it shall consider, but is not bound by the recommendation made by the Zoning Administrator and the Planning Commission.
 - b. The Council shall approve or disapprove the application within 45 days from receipt of a recommendation of the Planning Commission. Any application which is not approved or disapproved by the Council within 120 days from receipt of a completed application by the Zoning Administrator shall be deemed approved. A complete application for a proposed division or combination shall be approved if; in addition to the requirements of this Ordinance it meets the applicable requirements of the Land Division Act.
 - c. The Council shall provide the person who filed the application written notice whether the application is approved or disapproved and, if disapproved, all the reasons for disapproval.

20.15 LANDSCAPING AND BUFFERS.

- 1. Landscape Plan Review. A separate detailed landscape plan shall be submitted as part of the any 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:
 - a. Planting plans shall be prepared by a registered landscape architect.
 - b. Illustrate location, spacing, species, and size of proposed plant material.
 - c. Confirm that each landscape standard is separately met on the plans.
 - e. 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.
 - f. Identify trees and other landscape elements to be preserved.
 - g. Delineate the location of tree protection fence and limits of grading at the perimeter of areas that to be preserved.
 - h. Provide details to ensure proper installation and establishment of proposed plant material.
 - i. Identify grass areas and other methods of ground cover.
 - k. 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.
- 2. Minimum Planting. All plant material shall be hardy to Benzie County, be free of disease and insects, and conform to the American Standard for Nursery Stock of the American Nurserymen.
- 3. 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 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.
4. 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 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 15 feet, measured from the property line.
 - 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.
5. 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.
6. 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 pavement and to channelize and define logical areas for pedestrian and vehicular circulation.
7. 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.
 - 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.
8. 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.

20.16 LIGHTING. The intent of this Section is to protect the health, safety and welfare of the public by recognizing that buildings and sites need to be illuminated for safety, security and visibility for pedestrians and motorists. To do so, requirements are imposed for various forms of lighting that will: minimize light pollution; maintain safe nighttime driver performance on public roadways; preserve the restful quality of nighttime by eliminating intrusive artificial light and lighting that unnecessarily contributes to 'sky glow'; reduce light pollution and light trespass from light sources onto adjacent properties; conserve electrical energy; and curtail the degradation of the nighttime visual environment.

1. Submittal Requirements. The following information must be included with any site plan required by Article 7:
 - a. Location of all proposed and existing freestanding, building-mounted and canopy light fixtures on the site plan and building elevations;
 - b. Specifications and details for the type of fixture being proposed including the total lumen output, type of lamp and method of shielding;
 - c. Use of the fixture proposed; and
 - d. Any other information deemed necessary by the Zoning Administrator to determine compliance with provisions of this Section.
2. General Lighting Requirements. The following requirements apply to all pole-mounted and building mounted exterior lighting:
 - a. Exterior lighting fixtures shall be fully shielded and directed downward to prevent off-site glare. Further, the design and size of such fixtures shall be compatible with the architecture of the building.
 - b. The Village may require decorative light fixtures as an alternative to shielded fixtures where it will be compatible with the Village character.
 - c. The maximum height of pole-mounted light fixtures shall be 14 feet measured from the finished grade of the parking lot to the top of the fixture. The Village may allow a taller fixture.
 - d. Luminous tube and exposed bulb fluorescent lighting is prohibited as an architectural detail on all buildings, such as along the roofline and eaves, around windows, etc.
3. Miscellaneous Lighting Requirements. The following lighting requirements apply to other types of lighting that may be proposed either interior or exterior to the site.
 - a. Any light fixtures visible through a window must be shielded to prevent glare at the property line.
 - b. Luminous tube (includes neon) and exposed bulb fluorescent lighting (visible from the property line) is prohibited unless it is part of a sign that meets the requirements of Section 20.26.
 - c. The internal illumination of building-mounted canopies is prohibited.
 - d. Indirect illumination of signs, canopies, window displays and buildings is permitted provided there is no glare.
 - e. The use of laser light source, searchlights or any similar high intensity light for outdoor advertisement or entertainment is prohibited.
 - f. Lighting shall not be of a flashing, moving or intermittent type.

20.17 MANUFACTURED HOUSING COMMUNITIES

1. Purpose. These regulations are established to allow the development of state-licensed manufactured housing communities that comply with the requirements of this Section within the R-1 District. 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.

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.

3. Emergency and Safety.

a. 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.

b. 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 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.

c. 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).

d. 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.

e. 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.

f. 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).

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.

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.

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.

7. Licenses and Permits.

a. 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.

b. 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.

c. 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.

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

8. Lighting. Except in a seasonal manufactured home community, all internal street and sidewalk systems within a manufactured housing community shall be lighted as follows:

a. Access points shall be lighted. If the public thoroughfare is lighted, the illumination level shall not be more than the average illumination level of the adjacent illuminated thoroughfare.

b. At all internal road intersections and designated pedestrian crosswalks, the minimum illumination shall not be less than .15 foot candles.

c. Internal roads, parking bays, and sidewalks shall be illuminated at not less than .05 foot candles.

d. Lighting fixtures for site-built buildings and structures shall comply with the state electrical code.

9. Open and Recreational Space and Facilities.

a. 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.

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

c. 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.

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

10. 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.

a. 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.

b. 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:

i. 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.

ii. 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.

11. Setbacks and Distances.

a. 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:

i. 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.

ii. 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.

iii. 50 feet from permanent community-owned structures, such as either of the following:

(a) Club houses.

(b) Maintenance and storage facilities.

(c) 100 feet from a baseball or softball field.

(d) 25 feet from the fence of a swimming pool.

b. 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.

c. 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:

i. 7 feet from the edge of an internal road.

ii. 7 feet from a parking space on an adjoining home site or parking bay off a home

site.

iii. 7 feet from a common sidewalk.

iv. 25 feet from a natural or man-made lake or waterway.

d. 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:

i. 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.

ii. Roof overhangs shall be set back 2 feet from the edge of an internal road.

e. Steps and their attachments shall not encroach more than 3 1/2 feet into parking areas.

f. 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.

12. Sidewalks.

a. Common sidewalks shall be constructed in compliance with all of the following requirements:

i. 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.

- ii. All common sidewalks shall meet the standards established in Rule R125.1928.
 - b. 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.
- 13. Skirting.
 - a. 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.
 - b. Skirting shall be vented as required by Rule R125.1604.
 - c. Skirting shall be installed in a manner to resist damage under normal weather conditions and shall be properly maintained by the resident.
 - d. Skirting shall be aesthetically compatible with the appearance of the manufactured home.
 - e. All skirting shall meet the requirements established in the Manufactured Housing Commission Rules.
- 14. Storage. As to personal property, a manufactured home site shall be kept free of fire hazards, including combustible materials under the home.
- 15. Streets, Driveways and Parking Areas. All manufactured housing communities shall comply with the following design requirements:
 - a. 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.
 - b. 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).
 - c. 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).
 - d. Parking spaces; streets. All internal roads shall be two-way and have driving surfaces that are not less than the following widths:
 - i. Two-way, no parking 21 feet
 - ii. Two-way, parallel parking, 1 side 31 feet
 - iii. Two-way, parallel parking, 2 sides 41 feet
 - e. 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.
 - f. Road widths, street names, addresses & traffic control.
 - i. 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.
 - ii. 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.
 - iii. The turning lane system shall be tapered into the community internal road system commencing at a minimum depth of 60 feet.
 - iv. 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.

v. 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.

vi. 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.

16. Utilities. The following utility standards shall apply to all manufactured home communities:

a. Drainage.

i. All drainage outlet connections shall be subject to review and approval by the Benzie County Drain Commissioner.

ii. 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.

iii. Drain utility connections shall comply with Rule R125.1603(c).

b. 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).

c. Fuel & gas heating service. The installation, maintenance, operation and service of manufactured housing community fuel and gas heating systems and connections shall comply 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).

d. 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.

e. Television. Television service installation shall comply with requirements of Rule R125.1940(1).

f. 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.

17. Plan Review: Preliminary plans. Preliminary plans shall be submitted to the Zoning Administrator for review and prepared in accordance with the preliminary plan provisions contained in this Section. The plans shall include the location, layout, general design and description of the project. The preliminary plan requirements of this Section shall not include detailed construction, plot or site plan review plans.

Prior to the establishment of a new manufactured housing community, an expansion of a manufactured housing community, or construction of any building within the community not previously approved, a plan shall be presented to the Village for its review and approval, as provided in MDEQ Rule R325.3381.

a. Application content. All plans submitted to the Planning Commission for review under this section shall contain the following information:

i. All site and/or property lines are to be shown in scale dimension.

ii. The name and address of the property owner and developer.

b. Decision on approval.

i. The Planning Commission shall review the plan for

compliance with the design standards for manufactured housing communities contained in this Section, and the regulations of the Manufactured Housing Commission. If it is determined that the manufactured housing community complies with the regulations established in this section, it shall be approved.

ii. The plan shall be approved, approved with conditions, or denied within 60 days of receipt by the Village, unless the applicant consents to a longer period of review.

c. Review: Construction plan. A person shall not construct a manufactured housing community without first obtaining a Construction Permit from the Bureau of Construction Codes and Fire Safety, pursuant to Sections 12 and 13 of the Act. This process is outlined in Rules R125.1905 through R125.1918.

d. Standards: Construction. A manufactured housing community shall be built and maintained to the construction standards for which it was licensed under Section 16 of the Act by the State of Michigan, as detailed in Manufactured Housing Commission Rule R125.1947a.

20.18 MOBILE HOMES. 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:

1. 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.
2. 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.
3. 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.
4. Mobile homes shall not be used as an accessory building.

20.19 MOVING OF STRUCTURES. 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 bond prior to such moving.

20.20 OFF STREET PARKING AND LOADING

1. Scope. Off-street parking facilities shall be provided for occupants, employees, and patrons of buildings within the Village of Elberta.
 - 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:
 - a. 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.
 - b. Usable Floor Area (UFA). Used in determining parking requirements, usable floor area shall mean the total area of all the floors of the building used by the principal activity as specified in the Parking Schedule, measured from the interior faces of the building. The areas used for storage, mechanical equipment, and stairwells or otherwise not occupied by people shall be excluded from the floor area calculation.
 - c. Gross Floor Area (GFA). Used in determining loading requirements, gross floor area means the total floor area used for the main and accessory activities and storage areas of the building served.
 - d. 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.
 - e. 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.

f. 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.

3. Application and Determination.

a. 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.

b. Determination of Required Parking Facilities. The Zoning Administrator shall determine the minimum number of spaces required for accessory off-street parking by referring to the table in this Section 20.16 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.

c. 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.

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
Single family dwelling unit	2
Two-family and Multi-family dwelling unit	1.5
Hotels, motels and other like accommodations	1 per unit; 1 per employee
Commercial	1 per 250 square feet
Parking for all other uses shall be as determined by the Planning Commission	

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

a. Each parking space shall be at least 10 feet in width and 20 feet in length.

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

c. 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.

d. No parking or loading space shall be accessible to a street except by a driveway.

6. Parking in Commercial Districts. Every parking area in a Commercial District shall meet the following requirements:

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

b. 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.

c. A site development plan of any parking area with 20 spaces or more shall be approved by the Planning Commission as provided in Article 7.

7. Location of Parking.

a. 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.

b. 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.

c. Other Land Uses. The off-street parking area for all commercial uses shall be located within 300 feet of the building it is required to serve.

8. Joint Use of Parking Facilities.

a. The joint use of parking facilities by 2 or more lots is encouraged whenever practical and satisfactory to each of the lots to be served. A reduction of individual parking requirements may be permitted by the Planning Commission in cases where neighboring uses have significantly different hours of operation from each other. However, each use shall provide a minimum of 50% of its individual off-street parking requirements.

b. Prior to approving any request for joint use of parking facilities, the Planning Commission shall consider:

- i. the location, number and spacing of driveways;
- ii. the use of landscaping to soften the visual impact of the parking lot;
- iii. internal circulation patterns and access to all participating uses; and
- iv. potential conflicts among users and changes in parking demand.

c. The Planning Commission may require, as a condition of approval, a copy of an agreement among participants to share parking facilities. Such agreement shall specify the time period for which such arrangement is agreed to.

9. In order to minimize excessive areas of parking, which may be unsightly and contribute to high rates of storm water runoff, exceeding the minimum parking space requirements by greater than 10% shall not be allowed, except as approved by the Planning Commission. In granting such additional space, the Planning Commission shall determine that such parking will be required, based on documented evidence, to accommodate the use on a typical day.

10. 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.

20.21 OUTDOOR STORAGE. No land in any district shall be used for the storage of unused or discarded equipment or materials, or for the storage of unlicensed vehicles, including motorcycles and recreational vehicles, salvage, water or junk outside of properly authorized buildings within the district, except (1) as required for storage of usable farm machinery equipment for agricultural uses; (2) in junk yards granted a special use permit; or (3) storage of recreational vehicles as provided in Section 20.30.

20.22 RESERVED

20.23 PRINCIPAL USE. Only one principal use shall be permitted on a lot, except as otherwise specifically permitted. 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.

20.24 PRIVATE ROAD AND DRIVEWAY STANDARDS

1. Private Road Definition. For the purposes of these standards, a private road is a road owned and maintained by the owners of the property 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.

2. 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 finish 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 three residential units shall not be considered a shared private driveway and must be reviewed as a private road.

3. Exclusion for Multiple Family Drives. The definitions of "private road" or "shared private driveway" do 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.

4. 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.

5. 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.

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

b. 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.

c. Location of all public or private utilities 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.

d. 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;

e. 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.

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

a. 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.

b. 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.

c. 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, 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 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.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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.

i. Street names: may be required by the Planning Commission to assist public emergency services.

j. 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.

7. 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 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.

8. 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:

a. 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.

b. 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.

c. 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.

20.25 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.

20.26 SIDEWALKS AND OTHER NON-MOTORIZED WAYS. 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, except for new construction pursuant to a Special Use permit that provides for public access and in planned unit developments. In planned unit developments, interior sidewalks or other non-motorized ways available to the public may be substituted if approved by the Council as part of a site plan.

Sidewalk construction shall meet the following requirements:

1. Meet the current construction specifications of the Michigan Department of Transportation.
2. Sidewalks shall extend across the entire frontage of the property or be located as required by the Council as part of a Special Use permit.
3. The sidewalk shall be located wherever possible within the highway right-of-way. However, the sidewalk may be located outside of the right-of-way to avoid obstructions or as part 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.
4. When required, permits must be obtained from the Michigan Department of Transportation.
5. 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.

20.27 SIGNS.

1. The following conditions shall apply to all signs erected or located in any district.
 - a. 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 signs shall be approved by the Zoning Administrator to their conforming to the requirements of the zoning district they are located in 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.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. Illumination of signs is permitted provided that the light from any illuminated sign shall be so shaded or directed that the light intensity is not objectionable to surrounding areas and is not hazardous to pedestrians or vehicle operators.
 - f. 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 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.
2. Temporary Signs. The following 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. Temporary signs shall conform to the following requirements:
 - a. Construction signs which identify the architects, engineers, contractors and other individuals or firms involved with the construction, but not including any advertisement of the building enterprise or the purpose for which the building is

intended, during the construction period, to a maximum area of 16 square feet for each firm. The signs shall be confined to the site of the construction and shall be removed within 14 days of the beginning of the intended use of the project.

b. Real Estate signs advertising the sale, rental or lease of the premises or part of the premise on which the signs are displayed, up to a total area of 6 square feet. Such signs shall be removed within 14 days of the sale, rental or lease of the premises.

c. Political campaign signs supporting the candidates seeking public political office.

d. Street banners advertising a public entertainment or event, if specially approved by the Council and only for locations designated by the Council during and for 14 days before and seven days after the event.

3. Signs in Residential Districts.

a. 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.

b. 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.

c. 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.

4. Signs in Commercial Districts.

a. Wall signs shall not exceed a total area of 1 1/2 square feet for each 1 lineal foot of building frontage or 1/2 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.

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

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

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

e. 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.

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

i. not located closer than 3 feet from any side lot line,

ii. does not obstruct pedestrian traffic,

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

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

h. Signs shall not project above the roofline.

5. SIGNS IN WATERFRONT AND LAKEBLUFFS DEVELOPMENT DISTRICT AND DEEP WATER POINT DISTRICT. 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 Village during site plan review.

20.28 SOLAR PANELS AND WIND GENERATORS. No freestanding solar panel or wind generator shall be located in a front yard. Solar panels and wind generators shall meet all side and rear yard setback requirements of the district in which they are located.

20.29 SOLID WASTE ENCLOSURE (NON-RESIDENTIAL). Dumpsters, including waste receptacles, waste compactors, and recycling bins, used for any purpose other than residential, shall be designed, constructed and

maintained according to the standards of this section. Waste 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.

1. Location: Waste receptacles shall be located in the rear yard or non-required side yard, unless otherwise approved by the Planning Commission and shall be as far as practical, and 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 device. The location and orientation of waste receptacle and enclosure shall minimize the potential for the waste receptacle to be viewed from public street or adjacent residential districts.
2. Access: Waste receptacles shall be easily accessed by refuse vehicles without potential to damage the building or automobiles parked in designated parking spaces.
3. Enclosure: Waste receptacles shall meet the following standards:
 - a. Each waste receptacle shall have an enclosing lid or cover.
 - b. Wherever possible, as determined by the Planning Commission, waste receptacles shall be enclosed on 3 sides with a gate on the fourth side. A gate shall not be required if the opening of the enclosure is not visible from the public street or a residential district, as determined by the Planning Commission. A gate must be maintained in operable and sanitary condition.
4. These provisions regarding solid waste enclosure do not apply:
 - a. If a structure, with a valid building permit and zoning permit, is being built on the site.
 - b. If a building is being torn down, with a valid zoning permit.
 - c. If a dumpster remains on a property no longer than 7 days per a year.

20.30 STORAGE OF RECREATIONAL VEHICLES. The storage or temporary parking of house travel trailers, motor homes, water craft and other recreation vehicles is permitted in any district PROVIDED that such storage or parking of such vehicles meets the following requirements.

1. Except as provided in subparagraph 20.30.2, the non-commercial storage of vehicles such as house travel trailers and motor homes shall be permitted in R-1 and C-1 districts, limited to 1 vehicle per lot, provided that such vehicle is parked in the side or rear yard, that it is not used as living or guest quarters and that it is located so as not to create a nuisance to a neighborhood use. There shall be no limitation to the number that may be stored in an enclosed building. The storage of such vehicles in Manufactured Housing Communities and planned unit developments is subject to the approval of the Zoning Administrator.
2. One house travel trailer or motor home may be temporarily parked on any R-1 residential lot for the purpose of guest quarters for a period not to exceed 10 continuous days or an aggregate period of 15 days in 1 month, and that such vehicle is parked in the side yard or rear yard and that it is located so as to not create a nuisance to a neighboring use, and further that all waste water and sewage is contained and carried off the lot to an approved sanitary disposal station.
3. Small recreation vehicles such as all terrain vehicles, water craft and snowmobiles may be parked or stored on any lot provided that such vehicles are not parked or stored in the street right-of-way or in such location as to create nuisance to neighboring uses. Such parking or storage shall be strictly for the personal, noncommercial use of vehicles owned by the property owner, tenant or guest.

20.31 STREET VACATIONS. Whenever any road, street, alley or other public right-of-way, or railroad right-of-way, is vacated by official action of the appropriate agency or governmental body, the zoning district adjoining each side of such right-of-way shall automatically be extended to the center of such vacation, and all areas included in the vacation shall then be subject to all of the regulations of the extended districts.

20.32 SWIMMING POOLS (OUTDOOR). Outdoor swimming pools may be installed in any district as an accessory use. All pools must meet the following conditions:

1. Pools may be installed in the side or rear yards of a lot in a residential district. Motels and hotels may install pools in the front yard.
2. A good quality fence, not less than 5 feet in height shall be required. The support posts thereof shall be constructed in a permanent manner and in such a way as to last for the duration of such pool. Such posts shall be spaced at intervals of not more than 8 feet. The fence shall entirely

- enclose the pool.
- 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 setbacks as required for buildings or structures.

20.33 TEMPORARY STRUCTURES AND USES. Temporary buildings and structures, which shall include semi-trucks/trailers, shall comply with the following requirements:

- 1. **Temporary Structures Used for Residential Purposes.** A building or structure may be approved for temporary residential use only while damage to the principal dwelling due to fire, flood, ice, wind, or other natural disaster is being repaired. Any such temporary building shall not be used as a residence without prior review and approval by the Zoning Administrator. Also, a mobile home or other approved living quarters may be occupied as a residence on a temporary basis on sites for which a building permit has been issued for construction, major repair, or remodeling of a new dwelling unit, subject to the following:
 - a. 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.
 - b. The total duration of a temporary permit shall not exceed 12 months.
 - c. Temporary structures shall comply with the setback standards for the district in which they are located.
 - d. Temporary structures shall have proper governmental approvals for electrical and utility connections to any temporary structure.
 - e. 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.
- 2. **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 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.
- 3. **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. A Certificate of Occupancy shall be required for such structures.
- 4. **Use as an Accessory Structure.** A temporary building or structure shall not be used as an accessory building or structure, except as permitted herein.
- 5. **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:
 - a. Adequate off-street parking shall be provided.
 - b. The applicant shall specify the exact duration of the temporary use.
 - c. Electrical and utility connections shall be approved by the Zoning Administrator.

20.34 USES NOT OTHERWISE INCLUDED WITHIN A DISTRICT. A land use which is not cited by name as a permitted use in a zoning district may be permitted upon determination by the Planning Commission that such use is clearly similar in nature and compatible with the listed or existing uses in that district. In making such a determination, the Planning Commission shall consider the following:

- 1. **Determination of Compatibility.** In making the determination of compatibility, the Planning Commission shall consider specific characteristics of the use in question and compare such characteristics with those of the uses which are expressly permitted in the district. Such characteristics shall include, but are not limited to, traffic generation, types of service offered, types of goods produced, methods of operation, and building characteristics.
- 2. **Conditions by which Use May Be Permitted.** If the Planning Commission determines that the proposed use is compatible with permitted and existing uses in the district, the Commission shall then decide whether the proposed use shall be permitted by right, as a special land use, or as a permitted accessory use. The proposed use shall be subject to the review and

approval requirements for the district in which it is located. The Planning Commission shall have the authority to establish additional standards and conditions under which a use may be permitted in a district.

3. No use shall be permitted in a district under the terms of this section if the use is specifically listed as a use permitted by right or as a special or conditional use in any other district.

20.35 WATER FRONT PROTECTION. RESERVED.

20.36 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 District Health Department or the Michigan Department of Environmental Quality shall be filed with the application for a Land Use Permit.

20.37 WETLAND REGULATIONS. 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

Any land division in a wetland will not be allowed unless of the proposed split lots includes 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 of the following requirements:

1. 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.
2. The site does not support state or federal endangered or threatened species.
3. The site does not represent what is identified as a locally rare or unique ecosystem.
4. The site does not support plants or animals of an identified local importance.
5. The site does not provide flood and storm control by the hydrologic absorption and storage capacity of the wetland.
6. The site does not provide groundwater recharge documented by a public agency.
7. 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.
8. The site does not provide protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.

9. The site does not provide pollution treatment by serving as a biological and chemical oxidation basin.
10. The site does not provide erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
11. The site does not provide sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.
12. The site does not provide sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.
13. 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:
 - a. The relative extent of the public and private need for the proposed activity.
 - b. The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
 - c. 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.
 - d. The probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
 - e. The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.
 - f. The size of the wetland being considered.
 - g. The amount of remaining wetland in the general area.
 - h. Proximity to any waterway.
 - i. Economic value, both public and private, of the proposed land change to the general area.

**ARTICLE 21
SPECIAL USES**

21.01 INTENT. 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:

1. Provide a mechanism for public input on decisions involving more intense land uses.
2. 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.
3. Regulate the use of land on the basis of impact to the Village overall, and adjacent properties in particular.
4. Promote a planned and orderly development pattern which can be served by public facilities and services in a cost-effective manner.
5. Ensure uses can be accommodated by the environmental capability of specific sites.
6. Provide site design standards to diminish negative impacts of potentially conflicting land uses.
7. 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.

21.02 APPLICATION, REVIEW AND APPROVAL PROCEDURES. The procedure for Special Use review is:

1. An Applicant for a Special Use shall submit an application for review, on a form approved by the Village, and pay the required fee to the Zoning Administrator. The application presented for consideration shall contain the following:
 - a. Name of proposed development.
 - b. Common description, complete legal description and address (if available) of the property.
 - c. Dimensions of land: width, length, acreage, and frontage.
 - d. Existing zoning classification and zoning of all adjacent properties.
 - e. Proposed use of the land.
 - f. Name, address, and phone number of: firm or individual who prepared the application; legal owner of the property; and Applicant (including basis of representation.)
 - g. Signature of the legal owner and the Applicant.
 - h. A site plan, prepared in accordance with the provisions of Article 7 of this Ordinance.
2. Planning Commission Review
 - a. If the Zoning Administrator finds that the proposed use is permitted in the desired district by Special Use and all of the information complete, he or she shall notify the Planning Commission. The Zoning Administrator shall prepare a report to the Planning Commission on the Special Use application. If the Special Use is not permitted in the district or the application is not complete, the Zoning Administrator shall return the application to the Applicant with a list of deficiencies.
 - b. A public hearing shall be scheduled at the next regular meeting to review the request. The Chairperson, at his or her discretion, may place the application on the Planning Commission's agenda for discussion prior to the public hearing. A notice of the public hearing shall be published and sent in accordance with Section 5.07.
 - c. The Planning Commission shall conduct the required public hearing.
 - d. The Planning Commission shall deliberate on the proposed Special Use and review the application in terms of the requirements of Section 7.07 (criteria for Site Plans), the Special Use General standards listed in Section 21.09 and any specific standards applicable to the Special Use and set forth in this Ordinance.
 - e. The Planning Commission shall recommend that the Council either approve, approve with conditions (as described below in Section 21.03) or deny the Special Use and the accompanying site plan. Such recommendation shall include:
 - i. the decision (to approve, not approve, or approve with conditions);
 - ii. reasons for the decision;

- iii. findings of fact on which the reasons are based; and
 - iv. if applicable, conditions of approval.
- 3. Council Review. The Special Use request and other pertinent information, together with the recommendation of the Planning Commission, shall be placed on the agenda of the next Council meeting and a public hearing shall be scheduled at the meeting. The President, at his or her discretion, may place the application on the Council's agenda for discussion prior to the public hearing. A notice of the public hearing shall be published and sent in accordance with Section 5.07. The Council shall conduct the required public hearing and deliberate on the proposed Special Use and review the application in terms of the requirements of Section 7.07 (criteria for Site Plans), the Special Use General standards listed in Section 21.09 and any specific standards applicable to the Special Use and set forth in this Ordinance. The Council shall consider, in making its findings of fact, the record, report and supporting documentation provided by the Planning Commission. The Council shall either approve or reject the request, or refer the application back to the Planning Commission for further consideration, within 60 days, unless an extension has been agreed upon in writing by both the Council and the Applicant. The motion or minutes containing the decision of the Council shall include
 - a. the decision;
 - b. the reasons for the decision;
 - c. the findings of fact upon which the reasons are based; and
 - d. conditions of approval, if any.
- 4. A performance guarantee, as provided for in Section 5.04, shall be deposited with the Clerk. The performance guarantee shall be rebated consistent with Section 5.04.
- 5. If the requirements of Section 21.02.1 – 21.02.4 are satisfied, the Special Use permit shall be issued.
- 6. Upon issuance of a Special Use permit, the Applicant shall request site plan approval prior to issuance of a Land Use permit for any construction.
- 7. An appeal of a decision to grant or deny a Special Use may be taken to the Board of Appeals as set forth in Article 6.

21.03 CONDITIONS OF APPROVAL.

- 1. The Planning Commission may recommend, and the Council may impose, conditions of approval, which will help ensure the Special Use meets the standards of this Ordinance. The Council may delete any condition recommended by the Planning Commission and also may choose to impose a condition regardless of whether the Planning Commission recommended it. Any imposed conditions must be:
 - a. Designed to protect natural resources, the health safety, and welfare and the social and economic well-being of the people;
 - b. Related to a valid exercise of the police power; and
 - c. 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;
 - d. Are related to the standards established in this Ordinance for the land use or activity under consideration and are necessary to ensure compliance with those standards; and
 - e. provide adequate protection to existing land uses so the proposed land use will not be detrimental or injuries to the surrounding neighborhood.
- 2. Approval of a Special Use, including conditions made part of the approval, is attached to the property described in the application and not to the owner of such property. A record of conditions imposed shall be made a part of the Council minutes and maintained by the Zoning Administrator. The conditions shall remain unchanged unless an amendment to the Special Use permit is approved by the Council.

21.04 PHASING. Where a project is proposed for development in phases, the planning and designing 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. The Council may approve the final project for one phase at a time.

21.05 EXPIRATION; REVOCATION AND EXTENSIONS.

1. A Special Use Permit shall be valid for as long as the approved Special Use continues in accordance with the terms and conditions of the approved permit. The Special Use permit shall expire on the occurrence of one or more of the following conditions:
 - a. If replaced or superseded by a subsequent Special Use permit.
 - b. If replaced or superseded by a permitted Use.
 - c. If the Applicant requests the rescinding of the Special Use permit.
 - d. If the Use is not used, moved or vacated for a period of 1 year. Notice of the expiration shall be given to the property owner in writing.
 - e. If the Special Use permit 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.
 - f. If construction has not commenced and proceeded meaningfully toward completion within 1 year from date of issuance.
2. The revocation of a Special Use may occur if its recipient fails to continuously abide by its terms and conditions. The revocation procedure is as follows:
 - a. The Council, through its designated administrators, shall notify the recipient, in writing, of any violations of Village codes or provisions of the Special Use.
 - b. The recipient shall have 30 days to correct any deficiencies to the satisfaction of the Council.
 - c. If after 30 days any deficiencies remain, the Council may then revoke the Special Use, or if the conditions warrant, allow additional time to correct the deficiencies.
 - d. A repeat violation may cause immediate revocation of the Special Use.
3. The Planning Commission may permit a 1-year extension of the approval of a Special Use permit as a modification under Section 21.06.2.
4. For the purposes of this Section, a Special Use permit is considered effective upon approval of the application by the Council.

21.06 AMENDMENTS TO SPECIAL USE PERMITS. A Special Use permit may be amended or modified under the following circumstances:

1. The Zoning Administrator may authorize insignificant deviations in Special Use permit 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.
2. The Planning Commission may permit minor modifications in Special Use permits if the resulting use will still meet all applicable standards and requirements of this Ordinance. The Planning Commission may decide 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.
3. Any proposed amendments or modifications to a Special Use permit 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 Council, the holder of the Special Use permit may reject such additional conditions by withdrawing the request for an amendment and proceeding under the existing Special Use permit.

21.07 SPECIAL USES EXPANSIONS AND CHANGES. The expansion, change in activity, reuse or redevelopment of any use requiring a Special Use permit shall require resubmittal in manner described in this Article. However, the Zoning Administrator may require expansions of less than 200 square feet to obtain Special Use approval where, in the opinion of the Zoning Administrator, unique circumstances exist or where

the proposed expansion could impact adjacent properties. A separate Special Use permit shall be required for each use requiring Special Use review on a lot, or for any expansions of a Special Use, which has not previously received a Special Use Permit. All expansions, regardless of size, shall meet the described zoning requirements.

21.08 RESTRICTIONS ON RESUBMITTAL OF A SPECIAL USE REQUEST. No application for a Special Use permit which has been denied wholly or in part shall be resubmitted for a period of 1 year from the date of denial, except on the grounds of new evidence or proof of changed conditions. A resubmitted application shall be considered a new application.

21.09 GENERAL REVIEW STANDARDS FOR ALL SPECIAL USES. Prior to approving a Special Use application, the Planning Commission and the 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 Council shall require stipulation to ensure that the following are met:

1. The Special Use will be consistent with the goals, objectives and future land use plan contemplated in the Master Plan, if completed.
2. 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 insure compliance with those standards.
3. 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 environmental impacts, views, aesthetics, noise, vibration, glare, air quality, drainage, traffic, property values or similar impacts.
4. The Special Use will not have a significant adverse impact on the natural environment.
5. 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.
6. 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:
 - a. vehicular turning movements;
 - b. proximity and relationship to intersections;
 - c. adequacy of sight distances;
 - d. location and access of off-street parking; and
 - e. provisions for pedestrian traffic.
7. 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.
8. The Special Use will be designed, located, planned, and operated to protect the natural resources, public health, safety, and welfare.
9. The Special Use will be related to the valid exercise of the police power.
10. The Special Use will promote the use of land in a socially and economically desirable manner.
11. Meet the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.
12. The Site Plan meets the requirements and criteria of Article 7.
13. The Special Use meets the applicable Regulations of Article 20.
14. The Special Use meets the ordinance requirements of the district in which the proposed Special Use is located.

21.10 SPECIAL USE SPECIFIC REQUIREMENTS. The following sections identify specific requirements for particular land uses. Such specific requirements shall be met prior to approval of a Special Use.

21.11 AUTOMOBILE WASH

1. The minimum area of the site shall be 15,000 square feet.
2. The minimum street frontage shall be 100 feet.
3. All lighting shall be installed in a manner which will not cause direct illumination on adjacent properties or public thoroughfares.

4. 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.

Amended 04/19/2012

21.12 AUTOMOBILE SERVICE STATIONS

1. 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.
2. Minimum lot area shall be **7,500** square feet. **(With a minimum width of 150feet – deleted)**
3. The proposed site shall have at least one property line on a major or minor street.
4. 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.
5. 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.
6. 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.
7. Hydraulic hoists, pits, and all lubrication, greasing, automobile washing, and repair equipment shall be entirely enclosed within a building.
8. No more than two driveway approaches shall be permitted directly from any major street nor more than one driveway approach from any minor street.
9. 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.
10. No driveway or curb cut for a driveway shall be located within ten feet of an adjoining property line.
11. The entire service area shall be paved with a permanent surface of **any suitable material.**
12. All vehicles shall be stored within the building or within an opaque fence. Vehicles storage shall not be permitted to exceed 72 hours.

21.13 AUTO BODY REPAIR SHOPS

1. 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.
2. 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. If the vegetative buffer is removed after the approval of the special use, the owner shall submit buffering plans to the Planning Commission for review and approval.

21.14 BOATHOUSES. RESERVED.

21.15 BUILDINGS GREATER THAN 5,000 SQUARE FEET IN SIZE.

1. If required by the Planning Commission, buildings shall have a well-defined front facade with entrances facing the street.
2. If required by the Planning Commission, buildings shall have windows and doors at street level. The windows shall be a minimum of 3 feet wide and 3 feet high.
3. If required by the Planning Commission, no building shall have more than 15 horizontal feet of wall facing the street without a window or door opening.
4. Trademark architecture, which identifies a specific company by building design features, shall be prohibited, unless the applicant can demonstrate that the design is compatible with the historic architecture of the Village of Elberta.

21.16 CAMPGROUNDS.

1. Campgrounds shall comply with the provisions of Part 125 of the Michigan Public Health Code.
2. 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.

3. The minimum size of a campground shall be 10 acres with a maximum of 100 acres.
4. 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.
5. 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:
 - a. Such accessory uses shall not occupy more than 10% of the area of the campground.
 - b. Such accessory uses shall be restricted in their use to occupants of the campground and their guests.
 - c. 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.
6. 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 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.
7. The campground site plan shall be subject to the review and approval of the Benzie County Health Department.

21.17 DRIVE-IN OR DRIVE-THRU FACILITIES OR ESTABLISHMENTS

1. 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).
2. No drive shall be closer to any other drive than 75 feet.
3. 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.
4. All buildings shall be set back a minimum distance of 30 feet from any adjacent right-of-way line.
5. 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.

Amended 04/19/2012

21.18 GASOLINE SERVICE STATIONS.

1. All accessory uses and services shall be conducted within a completely enclosed building.
2. The minimum site size shall be **7,500** square feet. **(With a minimum lot width of 150 feet - deleted)**
3. 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.
4. No more than 2 driveway approaches shall be permitted directly from any other public street.

21.19 GOLF COURSES 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.

1. Miniature golf courses are not included in this provision.
2. 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.
3. 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.
4. Minimum site area shall be at least 60 acres for 9 holes and 110 acres for 18 holes.
5. Lighting shall be shielded to reduce glare and shall direct light away from all residential lands, which adjoin the site.
6. No building shall be closer than 50 feet to any property or street line.

21.20 HOTELS, MOTELS AND OTHER TRANSIENT LODGING.

1. Minimum floor area shall contain not less than 125 square feet per guest unit shall be provided.
2. The maximum number of guests per unit shall not exceed 6 persons.
3. 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.
4. No lighting shall have a source of illumination or light lenses visible outside the property lines of the parcel or lot, and shall in no way impair safe movement or traffic on any street or highway.
5. 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.
6. Rental of snowmobiles, ATVs or similar vehicles, boats and other marine equipment, in conjunction with the operation of the establishment shall be prohibited.
7. 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.
8. The maximum number of rental units which may be developed at any single location shall be 20.
9. Accessory uses, including swimming pools, shall be as approved as part of the Special Use permit approval process.

21.21 RESERVED.

Amended 04/19/2012

21.22 JUNK YARDS.

1. The site shall be a minimum of **3** acres in size.
2. A solid fence or wall at least 8 feet in height shall be provided around the entire periphery of the site to screen the site from surrounding property and right-of-way.
3. Fences or walls shall be of sound construction, painted and otherwise finished neatly and inconspicuously.
4. All activities shall be confined within the fenced-in area. There shall be no stocking of material above the height of the fence or wall, except that movable equipment used on the site may exceed the wall or fence height. No equipment, material, signs or lighting shall be used or stored outside the fenced-in area.
5. All fenced-in areas shall be setback at least **20** feet from any front street or property line.
6. The front yard setback shall be planted with trees, grass and shrubs to minimize the appearance of the installation.
7. No open burning shall be permitted and all industrial processes involving the use of equipment for cutting, compressing or packaging shall be conducted within a completely enclosed building.

21.23 MARINAS AND LAUNCHING RAMPS FOR COMMERCIAL OPERATIONS.

1. The lot for the marina shall abut and have direct access to a major or minor street.
2. 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.
3. 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.
4. 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.
5. 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.
 6. 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.
 7. Special measures shall be taken to preserve vegetation around shoreline areas to prevent soil erosion.
 8. 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.
 9. Marinas shall meet all applicable standards and regulations of the Department of Natural Resources, Department of Environmental Quality, 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.
 10. 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.
 11. 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.

21.24 RESERVED.

21.25 PLANNED SHOPPING CENTERS

1. In addition to the requirements of Section 21.02, applications for a Special Use Permit for Planned Shopping Centers shall include
 - a. Market analysis by a recognized, reputable market analyst setting forth conclusively economic justifications and needs for the establishment of a center of the type and size proposed by the Applicant.
 - b. Traffic survey prepared by qualified experts indicating the effects of the proposed shopping center on adjacent streets.
 - c. List of proposed uses for the center.
2. Minimum lot area shall be 5 acres.
3. All permitted activities shall be conducted entirely within wholly enclosed permanent buildings, except for parking, loading and unloading of commercial vehicles, and gasoline service stations.
4. Access to the shopping center shall be provided by at least 1 direct access through a major thoroughfare.

21.26 PLANNED UNIT DEVELOPMENTS.

1. An application for a planned unit development must include demonstration that the following objectives of the planned unit development are met:
 - a. To permit flexibility in the regulation of land development;
 - b. To encourage innovation in land use and variety in design layout and types of structures constructed;
 - c. To achieve economy and efficiency in the use of land, natural resources, energy, and the providing of public services and utilities;
 - d. To encourage useful open space; and
 - e. To provide improved housing, governmental functions, employment and shopping opportunities particularly suited to the needs of the Village and the region.
2. 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 unless expressly retained in the Special Use permit.

3. Qualifying Conditions. A Planned Unit Development is intended to accommodate developments: (a) with mixed or varied uses; (b) sites with unusual topography or unique settings within the community; and (c) land which provides a unique opportunity to develop with an atmosphere which can accommodate a variety of civic functions as well as mixed land uses which add interest and flavor to the living and working environment while protecting fragile areas having high natural values. Approval will not be granted when the Planned Unit Development is sought primarily to avoid the imposition of standards and requirements of existing zoning classifications rather than to achieve the objectives of this Section. Additionally, no Planned Unit Development shall be approved unless the development meets, in addition to the standards set forth in Section 21.09, the following standards:

- a. The development will be compatible with adjacent land use, the natural environment, and the capacities of the affected public services and facilities, and such use is consistent with the public health, safety and welfare of Village residents, and the benefits of the development are not achievable under any single zoning classification.
- b. The site shall contain no less than 5 acres.
 - c. The development is warranted by the design of additional amenities made possible with and incorporated by the development proposal.
- d. The development consolidates and maximizes usable open space.
 - e. Landscaping is provided to insure that proposed uses will be adequately buffered from one another and from surrounding public and private property and to create a pleasant pedestrian scale outdoor environment.
 - f. Vehicular and pedestrian circulation, allowing safe, convenient, uncongested and well-defined circulation within and access to the development.
 - g. Existing important natural, historical and architectural features within the development are preserved.

4. Application. In addition to the requirements of Section 21.02, the following requirements shall apply:

- a. The land for which application is made must be owned or under control of the Applicant and the parcel must be capable of being planned and developed as one integral land use unit. Non-contiguous parcels that are separated by public or private road or public utility right-of-way may be considered.
- b. The application must contain:
 - i. A certified boundary survey and legal description of the property.
 - ii. 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.
 - iii. A description of the type, character, and proposed use of land and structures within the planned development.
 - iv. Statement of present ownership of all land contained in the planned development.
 - v. Computation of total property area, open space, parking and building or structure areas.
 - vi. Evidence of the impact of the development on local streets, natural features, schools and utilities.
 - vii. Evidence of the market and economic feasibility.
 - viii. Such other information pertinent to the development or use.

5. If the Planned Unit Development is to be located in the Waterfront and LakeBluffs Development District, the following provisions shall control over any other requirements of this Ordinance:
 - a. All buildings and structure proposed for development shall occupy no more than 33% of the total property(ies) included within the site plan subject to the zoning designation. The remaining lot area may be used for parking, access roads, amenities, and landscaping.
 - b. A substantial portion of water shoreline shall remain available for public access and be shown as part of the landscaping plan.
 - c. There shall be no specific maximum density. Commercial space usage shall be limited to no more than 25% of the total building area within a mixed use building or structure housing both residential and/or overnight rental accommodations and allowable uses specified in the Commercial District.
6. 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. All buildings and structure proposed for development shall occupy no more than 33% of the total property(ies) included within the site plan subject to the zoning designation. The remaining lot area may be used for parking, access roads, amenities, and landscaping.
 - b. 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.
 - c. 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 housing both residential and/or over night rental accommodations and allowable uses specified in the Commercial District.

Amended 05/20/2010

21.27 REGULATED USES.

1. Purpose.

a. In the development and execution of this section, it is recognized that there are some uses which, because of their very nature, have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances or when 1 or more of them are located in near proximity to a residential zone, thereby having a deleterious effect upon the adjacent areas. Special regulations of these uses is necessary to ensure that these adverse effects shall not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. These controls are for the purpose of preventing a concentration of these uses within any one area, or to prevent deterioration or blighting of a nearby residential neighbor hood. These controls do not legitimize activities, which are prohibited in other Sections of the Code.

b. In regulating sexually oriented businesses, it is the purpose of the Section to promote the health, safety, and general welfare of the citizens of the Village, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the Village. The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Article to condone or legitimize the distribution of obscene material.

c. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Council, and on findings incorporated in the cases of *Pap's A.M. v City of Erie*, 529 U.S. 277 (2000); *Thomas v Chicago Park District*, 122 S. Ct. 775 (2002), *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S.560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *DLS, Inc v. City of Chattanooga*, 107 F.3d 220 (6th Cir. 1995); *East Brooks Books, Inc. v. City of Memphis*, 48 F.3d 220 (6th Cir, 1995); *Broadway Books v. Roberts*, 642 F. Supp. 486 (E.D. Tenn. 1986); *Bright Lights, Inc v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993), *Richland Bookmark v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Déjà vu v. Metro Government*, 1999 U.S. App. LEXIS 535 (6th Cir. 1999); *Bamon Corp. v. City of Dayton*, 7923 F.2d 470 (6th Cir. 1991); *Threesome Entertainment v. Strittmather*, 4 F.Supp. 2d 710(N.D. Ohio 1998); *J.L. Spoons, Inc. v. City of Brunswick*, 49 F.Supp.2d 1032 (N.D. Ohio 1999); *Triplett Grille, Inc. v City of Akron*, 40 F.3d 129 (6th Cir. 1994); *Nightclubs, Inc. v. City of Paducah*, 202 F.3d 884 (6th Cir. 2000); *O'Connor v. City and County of Denver*, 894 F.2d 1210(10 Cir. 1990); *Déjà vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County*, 2001 U.S. App. LEXIS 26007 (6th Cir. Dec. 6 2001); *Z.J. Gifts D-2, L.L. C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *Connection Distrib. Co. v Reno*, 154 F.3d 281 (6th Cir. 1998); *Sundance Assocs. V. Reno*, 139 F.3d 804 (10th Cir. 1998); *American Library Association v. Reno*, 33 F.3d 78 (D.C. Cir. 1994); *American Target Advertising, Inc. v. Giani*, 199 F.3d 1241 (10th Cir. 2000); *Z.J. Gifts Do2, L.L.C. v City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Big Wolf Discount Video Movie Sales, Inc v. Montgomery County*, 2002 U.S. Dist, LEXIS 1896 (D. Md., Feb.6, 2002); *Currence v. Cincinnati*, 2002 U.S. App. LEXIS 1258 (6th Cir., Jan. 24, 2002); and other cases; and on testimony to Congress in 136 Cong. Rec. S 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S 5636; 134 Cong. Rec. E 3750; and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona – 1979; Minneapolis, Minnesota-1980; Houston, Texas – 1997; Amarillo, Texas; Garden Grove, California – 1991; Los Angeles, California 1977; Whittier, California -1978; Austin, Texas – 1986; Seattle, Washington – 1989; Oklahoma City, Oklahoma – 1986; Cleveland, Ohio – and Dallas, Texas – 1997; St. Croix County, Wisconsin – 1993; Bellevue, Washington – 1998; Newport News, Virginia – 1996; New York Times Square study – 1994; Phoenix, Arizona – 1995-98; and also on findings from the paper entitled “Stripclubs According to Strippers: Exploing Workplace Sexual Violence,” by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from “Sexually Oriented Businesses: An Insider’s View,” by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000, and the Report of the Attorney General’s Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Council finds that Sexually oriented businesses as a category of establishments are correlated with harmful secondary effects, and that the foregoing reports are reasonably believed to be relevant to the problems that Village is seeking to abate and prevent in the future.

2. Additional notice

a. In addition to the notices required for the public hearing. The Clerk shall serve notice on all owners and occupiers of all property within 500 feet of the proposed use.

b. The notice shall give a minimum of 30 days from the mailing

of the notice until the Planning Commission public hearing on the matter.

c. The mailing shall include a postcard addressed to the Village, containing spaces for stating approval or disapproval of the proposed Regulated Use and including space for commentary.

d. The total number of postcards returned prior to the hearing shall be tallied. The Votes yea or nay shall also be tallied. These votes shall be considered as evidence in the Planning Commission's decision.

3. Expansion and Discontinuance of Use

a. Establishments where uses subject to the control of this Article are located shall not be expanded in any manner without first applying for and receiving the approval of the Council. Further, if a use subject to the control of this Section is discontinued for more than 30 days the use may not be reestablished without applying for and receiving the approval of the Council as provided in this Article.

b. Nothing in this Section shall prevent the reconstruction, repairing, or rebuilding and continued use of any building or structure the uses of which make it subject to the controls of this Section which is damaged by fire, collapse, explosion or act of God.

21.28 RESTAURANTS, TAVERNS OR OTHER EATING AND DRINKING ESTABLISHMENTS. All accessory buildings and dumpsters shall be screened from view of neighboring properties.

21.29 RESERVED

21.30 SHORT-TERM RENTALS.

1. The exterior of the dwelling shall appear as a standard single-family rental, with 1 primary entrance.
2. Sufficient parking for the rental use shall be provided on the property.
3. The short-term rental shall have designated location for boats, bikes, jet ski, and personal water craft.
4. A contact person, who resides year round in Benzie County, shall be available 24-hours a day, 7 days per week for the purpose of responding promptly to the complaints regarding the conduct of occupants of the short-term rental unit.

21.31 RESERVED

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

1. The minimum lot size shall be 3 acres.
2. 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.
3. 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.
4. In Residential Districts, such towers shall not exceed 40 feet in height.
5. 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.
6. No tower shall be erected within 500 feet of Lake Michigan.
7. 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.

8. Any nonconforming situations on the site shall be brought into conformance prior to the erection of the wireless communication facility.
9. Towers shall not be located within parking lots or other areas where they will interfere with the operation of a business on the property.
10. 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.
11. No tower shall be constructed as a speculative tower.
12. 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.
13. Colocation (the locating more than one antenna on one tower) is required. Each tower shall be designed and built to accommodate multiple antennas.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.

21.33 WIND ENERGY CONVERSION SYSTEM (WECS).

1. Minimum lot size for a commercial WECS shall be 20 acres, but a minimum of 5 acres of site area is required for each WECS proposed within an eligible property. Minimum lot size for a non-commercial WECS shall be 5 acres.
2. In addition to the requirements for Site Plan application, the following information shall be included with any application of a Special Use for a WECS: location of overhead electrical transmission or distribution lines; location and height of all buildings, structures, towers, security fencing, and other above ground structures associated with the WECS; locations and height of all adjacent buildings, structures, and above ground utilities located within 300 feet of the exterior boundaries of the site housing the WECS and/or Testing Facility; specific distances to other on-site buildings, structures, and utilities; existing and proposed setbacks of all structures located on the property in question; sketch elevation of the premises accurately depicting the proposed WECS and its relationship to all structures within 300 feet. For wind farms in which case numerous towers of similar height are planned, sketches are necessary only at borders of proposed project and when adjacent to other established structures within 300 feet; access road to the WECS and Testing Facility with detail on dimensions, composition, and maintenance; planned security measures to prevent unauthorized trespass and access.
3. Setbacks must equal half the height of the tower including the height of the blade in its vertical position.
4. Each WECS shall be grounded to protect against natural lightning strikes in conformance with the National Electrical Code. Additionally, WECS and Testing Facility electrical equipment and connections shall be designed and installed in adherence to the

National Electrical Code.

5. A minimum of a 6-foot tall fence shall be provided around the perimeter of the WECS, or in the case of several WECS, around the perimeter of the site.
6. The height of a WECS and Testing Facility shall be measured from grade to the height of the blade in the vertical position or the highest point of the WECS, whichever is greater. Maximum height for a commercial WECS shall be 200 feet for a commercial WECS and maximum height of 130 feet for a non-commercial WECS.
7. WECS shall be of monopole design and shall not have guy wires.
8. Colors and surface treatment of the WECS and supporting structures shall minimize disruption of the natural characteristics of the site. No part of the structure shall be used for signs or advertising.
9. Blade-arcs created by the WECS shall have a minimum of 30 feet of clearance over any structure, land or tree within a 200 foot radius of the tower.
10. Each WECS and Testing Facility shall have one sign, not to exceed 2 square feet in area posted at the base of the tower. The sign shall contain the following information: warning high voltage; manufacturer's name; emergency phone number; and emergency shutdown procedures.
11. WECS and Testing Facilities shall not have affixed or attached any lights, reflectors, flashers or any other illumination, except for illumination devices required by Federal regulations.
12. WECS and Testing Facilities shall be designed and constructed so as not to cause radio and television interference.
13. The on-site electrical transmission lines connecting the WECS to the public utility electricity distribution system shall be located underground."
14. The WECS shall be located and designed such that shadow flicker will not fall on, or in, any existing residential structure.
15. Any WECS or testing facilities which are not used for 6 successive months shall be deemed abandoned and shall be dismantled and removed from the property.

ARTICLE 22
NONCONFORMING USES, STRUCTURES AND LOTS

22. 01 INTENT. Certain existing lots, structures, and uses of lots and structures were lawful before this Article was adopted, but have become nonconformities 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 survival 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.

22.02 NONCONFORMING LOTS.

1. 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.

2. 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.

22.03 NONCONFORMING USES OF LAND. 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:

1. 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.

2. 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.

3. If the nonconforming use of land ceases operation with the intent of abandonment for a period of more than 6 months, any subsequent use of the land shall conform to the regulations specified by this Article for the district in which the land is located.

22.04 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, yards, 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:

1. No structure may be enlarged or altered in a way which increases its nonconformity.

2. 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.

3. Should the structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

22.05 NONCONFORMING USES OF STRUCTURES AND LAND. If a lawful use of a structure, or of structure and land in combination, exists at the effective date of adoption or amendment of this Article that would not be allowed in the district under the terms of this Article, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this Article in the district in

which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

2. Any nonconforming use may be extended throughout any part of a building which was manifestly arranged or designed for the use, and which existed at the time of adoption or amendment of this Article, but no use shall be extended to occupy any land outside the building.
3. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations pertaining to the uses permitted in the district in which the structure is located, and the nonconforming use may not thereafter be resumed.
4. If the non-conforming use of land and structures ceases operation with the intent of abandonment for a period of more than 6 months, any subsequent use of the land shall conform to the regulations specified by this Article pertaining to the uses permitted in the district in which the land is located. Structures occupied by seasonal uses shall be excepted from this provision only so long as seasonal uses shall continue.
5. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.
6. If no structural alterations are made, any nonconforming use of structure, or structure and premises, may be changed to another nonconforming use of the same or a more restricted classification provided that the Board of Appeals, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use.
7. In permitting the change, the Board of Appeals may require appropriate conditions and safeguards in accord with the purpose and intent of this Article.
8. Where a nonconforming use of a structure, land, or structure and land in combination is hereafter changed to a more restrictive classification, it shall not thereafter be changed to a less restricted classification.

22.06 REPAIRS AND MAINTENANCE.

1. 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.
2. 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.
3. Where enlargement or structural alternation 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.

22.07 CHANGE OF TENANCY OR OWNERSHIP. There may be a change of tenancy, ownership, or management of any existing nonconforming uses of land, structures, and premises provided there is no change in the nature or character of the nonconforming uses except in conformity with the provisions of this Article.

ARTICLE 23
MISCELLANEOUS PROVISIONS

23.01 VESTED RIGHTS. Nothing in this Ordinance should be interpreted or construed to give rise to any permanent vested rights in the continuation of a particular use, district, zoning classification, or permissible activities therein. Furthermore, such rights as may exist through enforcement of this Ordinance are hereby declared to be subject to subsequent amendment, change or modification as may be necessary for the preservation or protection of public health, safety and welfare.

23.02 SEVERABILITY. In case any section or provision of this Ordinance shall be held to be invalid by a court of competent jurisdiction, the same shall not affect any other provision of this Ordinance, except so far as the provision declared to be invalid shall be inseparable from the remainder of any provision.

23.03 EFFECTIVE DATE. This Ordinance shall become effective 15 days after adoption by the Council.

23.04 REPEAL OF PRIOR ORDINANCE. The Village of Elberta Zoning Ordinance adopted May 5, 1994, as amended, is hereby repealed, effective coincident with the effective date of this Ordinance.

23.05 SAVINGS CLAUSE. The repeal of the Village of Elberta Zoning Ordinance adopted May 5, 1994, as provided in Section 23.04, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred there under or actions involving any of the provisions of said ordinance or parts thereof. Said ordinance 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.

