

Village of Michiana, MI
Friday, June 3, 2022

Chapter 360. Zoning

[HISTORY: Adopted by the Village Council of the Village of Michiana 12-4-2006 by Ord. No. 2006-04 (Section 11.000 of the 2001 Code). Amendments noted where applicable.]


GENERAL REFERENCES

Municipal civil infractions — See Ch. 28.
Planning Commission — See Ch. 36.
Construction codes — See Ch. 143.
Explosives and open burning — See Ch. 159.
Flood hazard areas — See Ch. 172.
Lighting — See Ch. 206.
Signs and advertising — See Ch. 279.
Stormwater management — See Ch. 300.
Trees — See Ch. 323.
Water — See Ch. 349.

ATTACHMENTS

Attachment 1 - Table 4-3, Site Development Requirements for Principal Land Uses 

Attachment 2 - Figures 18-1 and 18-2, Lot Diagrams 

Attachment 3 - Zoning Map 

Article I. Title and Purpose

§ 360-1. Title.

This chapter shall be known and cited as the "Village of Michiana Zoning Ordinance."

§ 360-2. Purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare; to encourage the use of lands in accordance with their character and adaptability; to limit the improper use of land; to conserve natural resources and energy; to meet the needs of the state's residents for food, fiber and other natural resources, including wooded areas, wetlands and the Lake Michigan shoreline and dunal formations, places of residence, recreation and other uses of land; to ensure that uses of the land shall be situated in appropriate locations and relationships; to avoid the overcrowding of population; to provide adequate light and air; to lessen congestion on the public roads; to reduce hazards to life and property; to facilitate adequate provision for a system of transportation, sewage disposal, safe and adequate water supply, recreation and other public requirements; to conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources and properties; to implement the goals and policies of the Village of Michiana Master Plan adopted pursuant to the Municipal Planning Act, Public Act 33 of 2008, as amended (MCLA § 125.3801 et seq.); and to advance all other purposes as authorized by the Michigan Zoning Enabling Act.^[2]

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*

[2] *Editor's Note: See MCLA § 125.3101 et seq.*

Article II. Interpretation, Vested Right and Repeal

§ 360-3. Interpretation.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements adopted for the promotion of the public health, safety and general welfare. Unless specifically provided for, it is not intended by this chapter to repeal, abrogate, annul or in any way to impair or interfere with the existing and unrepealed provision of law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of building or land; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or structures or land or upon the courtyards or other open spaces than are imposed or required by such existing provisions of law or ordinance or by such rules, regulations or permits, the provisions of this chapter shall control.

§ 360-4. Vested right.

Nothing in this chapter should be interpreted or construed to give rise to any permanent vested rights in the continuation of any particular use, district, zoning classification or any permissible activities therein; and they are hereby declared to be subject to subsequent amendment, change or modification as may be necessary to the preservation or protection of public health, safety and welfare, except as provided in Article VI, Nonconforming Lots, Uses and Structures.

§ 360-5. Repealer.

The Village of Michiana Zoning Ordinance adopted on March 22, 1991, and amendments thereto, is hereby repealed as of the effective date of this chapter. The repeal of such ordinance and its amendments does not affect or impair any act done, offense committed or right accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time it was enforced, prosecuted or inflicted.

Article III. Administration, Enforcement and Penalties

§ 360-6. Purpose.

It is the purpose of this article to provide for the administration and enforcement of this chapter, including the creation of a review and permit process. The primary permit process shall require the issuance of a zoning compliance certificate, which shall indicate that the uses and plans for which the certificate is requested comply with this chapter. Upon the issuance of a certificate, the applicant may establish the use for which the certificate has been issued, including the erection of a building or structure, provided a building permit has been obtained from the Building Inspector demonstrating conformance to the requirements of the Construction Code.^[1] For single-family dwellings, a building permit may simultaneously serve as a zoning compliance certificate.

[1] *Editor's Note: See Ch. 143, Construction Codes.*

§ 360-7. Zoning compliance certificate required.

- A. Certification required/conformance to ordinance. Except as provided in Subsection B below, no grading or excavation shall be initiated, no fence, wall, structure or building shall be erected, altered or moved, and no land or building shall be used or undergo a change in use as delineated

in Table 4-2 of this chapter until the Zoning Administrator has issued a zoning compliance certificate that shall signify the proposed activity conforms to the requirements of this chapter and, where required by state law, the Building Inspector certifies proposed structures and buildings comply with the Village's Construction Code through the issuance of a building permit. Such certification of zoning compliance shall be on a form established for such purpose, and the completed form shall identify the specific use authorized, the drawings that graphically portray the proposed alterations and improvements to the property, and any conditions made part of such certification. No zoning compliance certificate or building permit shall be issued for any structure, building or use of land where the use, construction, addition or alteration would be in violation of this chapter. See § 360-9 regarding application for compliance certificates.

- (1) In the case of a single-family dwelling, a building permit may simultaneously serve as a zoning compliance certificate. However, any building permit application that is to simultaneously serve as an application for zoning compliance certification shall include all information required by this chapter in addition to any information that may be necessary to conform to the Construction Code for building permit approval.
- B. Zoning compliance certificate exemption. Certification of zoning compliance shall not be required for the alteration of any residential building wall, provided no change is made to the height or location of an exterior wall and such alterations are in compliance with all requirements and standards of this chapter.

§ 360-8. Responsibility for administration.

- A. General administration. The administration and enforcement of this chapter shall be the responsibility of the Village Council, the Zoning Board of Appeals, and such personnel as designated by the Village Council in accordance with Public Acts of 2006, No. 110, as amended, and this chapter. The Village Council shall appoint a Zoning Administrator who shall act as an officer in the administration and enforcement of this chapter. The Zoning Administrator may simultaneously serve as the Building Inspector.
- B. Duties of the Zoning Administrator. Under no circumstances is the Zoning Administrator permitted to make changes in this chapter, nor to vary the terms of this chapter while carrying out the duties prescribed herein. The Zoning Administrator shall perform the duties specified in this chapter, including, at a minimum:
- (1) Review applications. Undertake and/or assist in the review of zoning compliance certificate applications and other applications made under this chapter, including applications for plot plans, site plans, special land use approvals, and variances.
 - (2) Issue compliance certificates. Issue certificates of zoning compliance and other approvals when all provisions of this chapter have been met and the necessary approval has been granted by the proper body or official.
 - (3) File of applications. Maintain files of all zoning compliance certificate applications, action on such applications, and any performance guarantees associated with such certificates. These files shall be open for public inspection.
 - (4) Inspections and violations. Assist in the investigation and resolution of violations of this chapter, including inspections of buildings or premises to investigate, monitor and ensure conformance with this chapter; also to request state agencies' reviews deemed necessary during construction.
 - (5) Record of complaints. The Zoning Administrator shall keep a record of every complaint of a violation of any of the provisions of this chapter and of the action taken consequent to each complaint, and shall provide the Village Clerk with a copy of such records. Such records shall be open for public inspection.

- (6) Reports. The Zoning Administrator shall report to and attend meetings of the Zoning Board of Appeals and Village Council, as requested by such bodies, on activities pertaining to the issuance of compliance certificates, complaints of violation, actions taken on such complaints, and other ordinance administrative and enforcement matters as may arise.

§ 360-9. Zoning compliance certificate application and review procedures.

A. General application and review. An application for a zoning compliance certificate shall be available from the Village Clerk. Upon approval of the application, which is to include, at a minimum, a plot plan or site plan, a certificate of compliance shall be issued. Whenever an application for a single-family dwelling and accessory uses and structures is in conformity with the provisions of this chapter or a variance granted by the Zoning Board of Appeals, the Zoning Administrator shall issue the zoning compliance certificate. Zoning compliance certificate applications for uses, buildings and structures not associated with a single-family dwelling shall be issued by the Zoning Administrator only after the Village Council finds such application is in conformity with the provisions of this chapter or a variance granted by the Zoning Board of Appeals according to Article **VII**.

- (1) Plot plan/site plan. An application for a zoning compliance certificate shall include the submittal of a plot plan or site plan. An application for a single-family dwelling and accessory structures thereto shall include the submittal of a plot plan according to Subsection **B** below. A site plan shall be required for all other uses, structures and buildings and shall be prepared according to Article **XI**, Site Plan Review. Upon approval of the plot plan or final site plan, a zoning compliance certificate shall be issued, except as may be provided otherwise in this chapter. Two site plans are required at a scale of one inch equals 20 feet. The first site plan shall show existing property corners, existing elevation contours clearly marked at one-foot intervals, and the location of any and all existing structures located from property corners or property lines. The second site plan shall show existing and proposed contours at one-foot contour intervals and any and all proposed structures located from property corners or property lines. See Article **XI** for detailed site plan review regulations, which provide for Village Council action on site plans.
- (2) Special land uses. In addition to meeting the site plan requirements of Article **XI**, a zoning compliance certificate application for a use classified as a "special land use" according to Table 4-2 shall be processed according to the provisions of Article **XII**, Special Land Uses, which require Village Council action.
- (3) Variances. Where the approval of a variance by the Zoning Board of Appeals pursuant to § **360-56** is necessary for the approval of a proposed plot plan or site plan, no plot plan or site plan shall be approved nor shall such project be issued a zoning compliance certificate until action on such variance request has been taken by the Zoning Board of Appeals.
- (4) Incomplete applications. If zoning compliance certificate application materials are not administratively complete when received by the body that is to take action on the application, the body may deny such application or otherwise delay action on the application until it is made complete in a readily comprehensible manner.
- (5) Performance guarantees. A performance guarantee may be required as a condition to the issuance of any zoning compliance certificate in order to ensure conformance with the requirements of this chapter (see § **360-11**).
- (6) Certificate refusal in writing. In any case where a zoning compliance certificate or other approval requested under this chapter is refused, the reasons shall be stated in writing to the applicant.

B. Single-family dwellings/plot plan approval.

- (1) Application required. Application for a zoning compliance certificate for a single-family dwelling, including alterations and accessory structures and buildings thereto, shall be submitted to the Zoning Administrator on a form for that purpose and available from the Village Clerk. See § **360-7B** for exceptions. Three copies of all application materials shall be submitted and shall consist of:
- (a) The completed certificate application form and all permit applications, approvals and supporting documents associated with required state or federal permits.
 - (b) An accurate, readable, drawing of a scale not less than one inch equals 20 feet, constituting a plot plan, identifying the following:
 - [1] Name, address and telephone number of the applicant (and owner, if different).
 - [2] A survey showing property dimensions and legal description, lot area and an arrow pointing North, prepared by a Michigan-licensed surveyor.
 - [3] The location, dimensions and height of the existing and/or proposed structures to be erected, altered or moved on the lot. (See definition for "building height" in Article **XIV**.)
 - [4] Distances of buildings and structures from lot lines.
 - [5] A description of proposed use(s) of the building(s), land and structures.
 - [6] Configuration of the driveway and parking areas, and driveway design specifications demonstrating that driveway runoff will not cause ponding, flooding or erosion along the intersecting road, as may be required by § **360-79**.
 - [7] Existing public rights-of-way and easements.
 - [8] Front, side and rear elevations of all buildings, prepared by a Michigan-licensed architect.
 - [9] Existing and/or proposed location of septic drain field and potable water well.
 - [10] In the case of a corner lot, the designated side and rear yards. See Footnote 3 of Table 4-3.^[1]
 - [1] *Editor's Note: Table 4-3, Site Development Requirements for Principal Land Uses, is attached to this chapter.*
 - [11] Any other information deemed necessary by the Zoning Administrator to determine ordinance compliance and provide for the enforcement of this chapter.
 - [12] Furnish copies of all applications for permits from other local, state and federal agencies, and copies of permits issued by those agencies.
- (2) Application review. The Zoning Administrator shall review the zoning compliance certificate application and plot plan and determine their conformity with the provisions of this chapter, including requirements pertaining to lot area, lot width, setbacks, building height and permitted uses.
- (3) Action on application. After conducting a review, the Zoning Administrator shall reject, approve or conditionally approve the plot plan as it pertains to requirements and standards contained in this chapter. The applicant shall be notified in writing of the Zoning Administrator's action on the application, including any conditions associated with an approval. The decision by the Zoning Administrator shall be made within 15 workdays of the receipt of a complete plot plan application, including copies of all required county, state and federal applications and permits. See § **360-9C(1)** below regarding withholding of approval. A plot plan shall be approved if it contains the information required by and is in compliance with this chapter.

- (4) Approved plot plans. At least two copies of an approved plot plan, with any conditions contained within, shall be maintained as part of the Village records for future review and enforcement. One copy shall be returned to the applicant. For identification of the approved plans, each copy shall be signed and dated with the date of approval by the Zoning Administrator. If any variances from the chapter have been obtained from the Zoning Board of Appeals, the minutes concerning the variances, duly signed, shall also be filed with the Village records as a part of the plot plan and delivered to the applicant for information and direction.
 - (5) Plot plan changes. The Zoning Administrator shall review proposed changes to an approved plot plan in the same manner as the original plot plan application was submitted, reviewed and acted upon.
- C. Certificate withholding, expiration and revocation.
- (1) Withholding certificate. Where this chapter grants approval authority to a specific body, as in the case of plot plan approval by the Zoning Administrator and variance approval by the Zoning Board of Appeals, the designated approving body may withhold approval of an application pending verification that an applicant has received required county, state or federal permits, including but not limited to sewage disposal and potable water permits; soil erosion and sedimentation control permits; floodplain permits; and MDEQ permits for alteration of wetlands, critical dunes and high-risk erosion areas. Similarly, the Zoning Administrator, Zoning Board of Appeals or Village Council may condition final approval of the requested application on which it is required to act upon the receipt of any of the above-mentioned county, state or federal approvals or withhold the issuance of a compliance certificate until said permits from other agencies have been obtained. In no case shall a zoning compliance permit be issued for a use or structure prior to the receipt of a required MDEQ permit.
 - (2) Expiration of certificate. A compliance certificate shall become null and void after one year from the date of its issuance; provided, however, that the body which approved such certificate may waive or extend the period of time in which the certificate is to expire for a single period of no greater than 180 days, if it is satisfied that the owner is maintaining a good faith intention to proceed with construction. Upon expiration, the certificate shall be renewable only upon reapplication.
 - (3) Revocation. The Zoning Administrator in the case of a use subject to plot plan approval, or the Village Council in the case of a use subject to site plan approval, may revoke or cancel any approval in case of failure or neglect to comply with this chapter or in the case of any false statement or misrepresentation made in the application.
 - (a) Prior to the revocation of a certificate for any use or building subject to site plan approval, the Village Council shall hold a hearing on such revocation. The Zoning Administrator may issue a stop-work order to halt all construction activities and usage pending a decision on revocation of said certificate. At the hearing, the Village Council shall state the basis for the revocation, and the certificate holder shall be given the opportunity to present evidence and testimony against such revocation.
 - (b) Following the hearing, the Village Council may revoke the certificate, delay such revocation for a specified time period to permit the certificate holder time to correct specified violations, or find there is no basis for such revocation.
 - (c) Upon certificate revocation or in the case where revocation is delayed to correct violations, all further construction and usage shall cease other than for the purpose of correcting violations. If construction is not completed, the owner/contractor shall remove all new construction and restore the site to the approval of the Zoning Administrator or the Council. Failure to terminate the use for which the certificate was revoked, other than for the purpose of correcting the violation, is declared to be a nuisance per se and a violation of this chapter.

§ 360-10. Building permit and certificate of occupancy required.

- A. Building permit. No driveway or any other grading, excavation or construction shall be initiated prior to the issuance of a zoning compliance certificate and, where required by state law, the Building Inspector certifies proposed structures and buildings comply with the Village's Construction Code through the issuance of a building permit.
- B. Occupancy permit. No structure or use shall be occupied, in whole or in part, without first receiving a certificate of occupancy from the Building Inspector pursuant to the State Construction Code.

§ 360-11. Performance guarantee for compliance.

- A. Purpose. In authorizing any zoning compliance certificate for any use or building other than a single-family dwelling and accessory structures and uses thereto, the Village Council may require that a performance guarantee be furnished to ensure compliance with the requirements, specifications and conditions imposed with the granting of such certificate.
- B. Requirements of guarantee. The performance guarantee shall meet the following requirements:
 - (1) Improvements covered. Improvements that shall be covered by the performance guarantee include those features and actions associated with a project which are considered necessary by the body or official granting approval to protect the natural resources or the health, safety and welfare of residents of the Village and future uses or inhabitants of the proposed project area, including roadways, lighting, utilities, sidewalks, screening and drainage. In no case shall any portion of a performance guarantee be required for improvements intended to serve the public at large versus users of the development site or for facilities or improvements that are likely to result in public ownership or responsibility.
 - (2) Form. The performance guarantee shall be in the form of cash, certified check, irrevocable bank letter of credit, or surety bond, acceptable to the Village, which names the property owner as the obligor and the Village as the obligee. If appropriate, based on the type of performance guarantee submitted, the Village shall deposit the funds in an account in a financial institution with which the Village regularly conducts business.
 - (3) Amount and time required. The amount of the performance guarantee shall be equal to the estimated cost of improvements for which the performance guarantee is to cover, according to a detailed cost estimate submitted by the applicant and approved by the Village Council. After approval of the cost estimate, the performance guarantee shall be submitted at the time of issuance of the certificate authorizing the approved use or construction. No performance guarantee shall be required prior to the date on which the Village is prepared to issue the compliance certificate.
- C. Return of performance guarantee. The following procedure shall be followed in the return of performance guarantees:
 - (1) Request for payment. As required improvements are completed or when all of the required improvements have been completed, the obligor shall send written notice to the Zoning Administrator of completion of said improvements. Thereupon, the Zoning Administrator shall inspect all of the improvements and shall transmit a recommendation to the Village Council indicating either approval, partial approval, or rejection of the improvements or conditions with a statement of the reasons for any rejection. If partial approval is indicated, the cost of the improvement or condition rejected shall be set forth.
 - (2) Approval of payment. The Village Council shall either approve, partially approve or reject the return of the performance guarantee for the improvements or conditions, after consideration of the recommendation of the Zoning Administrator's written statement, and shall notify the obligor in writing of the action of the Village Council within 45 days after receipt of the notice

from the obligor of the completion of improvements. Where approval or partial approval is granted, the Village Clerk shall release the approved payment to the applicant. The portion of the performance guarantee to be returned shall be proportional to the work completed and shall be based on the itemized cost estimate for the applicable improvement or condition.

- (3) Lack of full completion. Should installation of improvements fail to meet full completion based on the approved site plan, or if the project area is reduced in size and improvements are only partially completed or conditions only partially met, the Village may complete the necessary improvements or conditions itself or by contract to an independent developer and assess all costs of completing the improvements or conditions against the performance guarantee. Any balance remaining shall be returned to the applicant.

§ 360-12. Timely action on applications.

All approvals applied for under this chapter shall be acted upon in a timely manner. However, in no case shall the matter of a timely decision undermine the intent of this chapter that all requested approvals undergo the necessary and adequate review to ensure all requirements and standards have been met and the public health, safety and welfare is preserved. The following time provisions shall apply unless specifically provided otherwise by this chapter or unique circumstances arise such as delays associated with the acquisition of county, state or federal permits, the submittal of an incomplete application, or unforeseeable practical delays in distributing applications to the necessary review bodies.

- A. Applications requiring Zoning Administrator action. A complete application for a zoning compliance certificate for a single-family dwelling or an accessory structure or use thereto shall be acted upon by the Zoning Administrator within 30 days of the submittal of a complete application.
- B. Applications requiring Village Council action. Where this chapter requires the Village Council to approve, deny or conditionally approve an application, as in the case of a site plan or special land use application or rezoning petition, the Village Council shall take action on the application within 90 days of the receipt.
- C. Applications requiring Zoning Board of Appeals action. Where the Zoning Board of Appeals is required by this chapter to act upon a request for a variance or ordinance interpretation or administrative appeal, the Zoning Board of Appeals shall take action on the application within 60 days of the receipt of a complete application.
- D. Public hearings. Where action on an application requires a public hearing, such hearing shall be held within 90 days of receipt of the complete application by the Village Clerk. See also § **360-16** regarding public hearing notices.

§ 360-13. Application fees.

- A. Application fees required. Fees for review of development proposals, rezoning requests, actions before the Zoning Board of Appeals, inspections and the issuance of permits or certificates required under this chapter shall be deposited with the Village Clerk in advance of processing any application. The amount of such fees shall be determined by the habitable square footage of the building or structure by the Village Council by resolution and may be revised from time to time. Such fees shall be limited to covering reasonable costs as standardized by the Council, costs incurred by the Village, and may include but are not limited to costs associated with conducting meetings and inspections, newspaper notices, postage, photocopying, staff time, mileage and any costs associated with reviews by qualified professionals including planners, engineers and/or attorneys.
- B. Professional review and fee. For any application for a zoning compliance certificate or variance, the reviewing body may require the payment of a professional review fee when professional input is desired before a decision is made due to the character or complexity of the proposal or concern

over the potential impacts of the project. The applicant is entitled to a refund of any unused professional review fee. If actual professional review costs exceed the amount of the fee, the applicant shall pay the balance due prior to final action on such application. A professional review shall result in a report to the Village indicating the extent of conformance or nonconformance with this chapter and matters which may create a threat to public health, safety or the general welfare, and may include a recommended course of action. Mitigation measures or alterations to a proposed design may be suggested where they would serve to lessen or eliminate identified impacts. The applicant shall receive a copy of any professional review contracted for by the Village and a copy of the statement of expenses for the professional services rendered.

C. Timeline for permits and application fees.

[Added 1-13-2017 by Ord. No. 2017-01]

- (1) All building permits are based on 1.5% of the construction cost. If a permit fee of \$2,500 or less would be good for one year from the date, the permit is issued. If the project is not completed after one year, the permit holder must reapply for new permit at the cost of one percent of the original permit cost.
- (2) A permit greater than \$2,500 will be good for 1 1/2 years from the date the permit is issued. If the project is not completed after 1 1/2 years, the permit holder must reapply for a new permit at the cost of one-percent of the original permit cost.

§ 360-14. Site inspections.

The Zoning Administrator and Planning Commission shall have the authority to make inspections of premises for the purposes of verifying information on an application, monitoring conformance with the regulations and standards of this chapter, and for any other purpose associated with responsibilities of the Zoning Administrator and Planning Commission granted by this chapter. The owner or his agent or representative, and the occupant or lessee of every building or other person having the care and management thereof, shall give the Zoning Administrator and Planning Commission free access thereto upon request at all reasonable times. No person shall interfere with the Zoning Administrator and Planning Commission in the discharge of their duties.

§ 360-15. Violations, penalties and fines.

[Amended 3-18-2016 by Ord. No. 2016-01]

A violation of any section of this chapter shall be punishable as a municipal civil infraction as set forth in Chapter **28**, Municipal Civil Infractions, of this Code. In addition to the penalties provided by this section and Chapter **28** of this Code, the Berrien County Court shall have equitable jurisdiction to enforce any judgment, writ or order necessary to enforce any provision of this chapter, including but not limited to abatement of violating condition or the granting of injunctive relief.

§ 360-16. Public hearing notices.

A. Hearing notice content. Unless otherwise required by the Michigan Zoning Enabling Act or this chapter, where applicable, all mail, personal and newspaper notices for public hearings shall do all of the following:

- (1) Describe the nature of the request, including whether the request is for a text amendment, Zoning Map amendment (rezoning), special land use, variance, appeal, ordinance interpretation or other purpose.
- (2) 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. No street addresses must be listed when 11 or more adjacent properties are proposed for rezoning or when the request is for an ordinance interpretation not involving a specific property.
- (3) Indicate the date, time and place of the hearing(s).
 - (4) Indicate when and where written comments will be received concerning the request.
- B. Recipients and means of notice. Unless otherwise required by the Michigan Zoning Enabling Act or this chapter, where applicable, the following shall receive notice of the hearing, which notice shall include the information specified in Subsection **A** above:
- (1) General public, by publication of the hearing notice in a newspaper of general circulation in the Village.
 - (2) The owners of property for which approval is being considered and the applicant, if the applicant is different than the property owner, by mail or personal delivery.
 - (3) All persons to whom real property is assessed within 300 feet of the boundary of the project subject to the request and to the occupants of all structures within 300 feet of the property, regardless of whether the property or occupant is located in the Village of Michiana, by mail or personal delivery. If the name of the occupant is not known, the term "occupant" may be used in making notification.
 - (a) Subsection **B(3)** above shall not apply in the case of rezoning requests involving 11 or more adjacent properties or an ordinance interpretation request or an appeal of an administrative decision that does not involve a specific property.
 - (4) Each electric, gas and pipeline public utility company, each telecommunications service provider, each railroad operating within the district or zone affected, and the airport manager of each airport that registers its name and mailing address with the Village Clerk for the purpose of receiving the notice of public hearing, by mail, in the case of a text amendment or Zoning Map amendment.
- C. Timing of notice. Unless otherwise required by the Michigan Zoning Enabling Act or this chapter, where applicable, all mail, personal and newspaper notices for public hearings shall be made not less than 15 days before the date the request will be considered for approval, including applications for Zoning Map amendments (rezonings), text amendments, special land uses, variances, appeals and ordinance interpretations.
- D. Confirmation of notices made by mail or personal delivery. Notice shall be deemed mailed by its deposit in the United States First Class Mail, properly addressed and postage paid. The Village Clerk shall prepare a list of property owners and registrants to whom notice was mailed as well as anyone to whom personal notice was delivered.

§ 360-17. Zoning Ordinance review by owner and contractor.

Both the owner and contractor shall sign a statement that they have reviewed the Zoning Ordinance and shall abide by all of its sections before a building permit will be issued.

Article IV. Zoning Districts; District Regulations; Zoning Map

§ 360-18. Establishment of districts.

For the purpose of this chapter, the Village is hereby divided into the following zoning districts, which shall be known by the following respective symbols and names and shall have boundaries as

delineated on the Official Zoning Map.

VR Village Residential District
 LR Lakefront Residential District
 PL Public Lands District

§ 360-19. Purposes of zoning districts.

Table 4-1: Purposes of Zoning Districts

Districts	Purpose
All districts	It is the purpose of all districts to protect sensitive environmental resources which may be present on a development site, and that the district uses are adequately served by facilities and services, including, but not necessarily limited to, sewage disposal, potable water, fire protection and road infrastructure. All districts are intended to support and be established in coordination with the Michiana Master Plan. Additional purposes of each district are delineated below.
VR Village Residential District	It is the purpose of the Village Residential District to provide opportunities for single-family residential development patterns and lifestyles of a village character, based on lot size, setback, open space and other development regulations which ensure a stable and sound residential environment and community character. To this end, this district prohibits uses that undermine the intended character of such residential area. Certain nonresidential land uses may be permitted where considered compatible with and/or supportive of the primary purpose of the district, including certain special land uses.
LR Lakefront Residential District	It is the purpose of the Lakefront Residential District to provide opportunities for single-family residential development patterns and lifestyles of a Village character along the Lake Michigan shoreline, based on lot size, setback, open space and other development regulations that ensure a stable and sound residential environment and community character, including the preservation of the stability and integrity of the Village's shoreline and dunal features and compliance with all local, state and federal regulations regarding shoreline protection. Other land uses may be permitted where considered compatible with and/or supportive of the primary purpose of the district, including certain special land uses.
PL Public Lands District	It is the purpose of the Public Lands District to recognize, accommodate and protect public resources in the Village. Such resources include public facilities associated with government administration, such as the Village Hall, and public facilities associated with governmental services, such as fire stations and parks. These public resources provide vital facilities and services to the Village and its residents on a day-to-day and long-term basis and improve public health, safety and welfare. Such public resources also include public open spaces comprising special and important natural resources, including shoreline and dunal areas, the protection of which is of great public interest to the Village of Michiana and the State of Michigan due to their environmental, recreational, visual and historical character. This district is established to ensure the protection of and continued viability of such facilities, services and resources and that they not be altered except where it is determined that such alterations maintain or enhance their public good.

§ 360-20. Zoning District Map.

- A. The boundaries of the respective districts enumerated in § **360-18** are defined and established as depicted on the Official Zoning Map titled "Village of Michiana Zoning Map," which is an integral part of this chapter. This Map, with all notations and explanatory matter thereon, shall be published as part of this chapter as is fully described herein.^[1]

[1] *Editor's Note: A copy of the Official Zoning Map is attached to this chapter.*

- B. This Official Zoning Map shall be identified by the signature of the Village President, attested by the Village Clerk, and bearing the following: "This is to certify that this is the Official Zoning Map of the Village of Michiana Zoning Ordinance adopted on the 4th day of December 2006. If, in accordance with the provisions of this chapter, changes are made in district boundaries or other matter portrayed on the Map, such changes shall be made on the Map.
- C. The Official Zoning Map shall be held by the Village Clerk and shall be the final authority with regard to the current zoning status of all land in the Village, along with supporting minutes of Village Council meetings regarding zoning district changes, regardless of the existence of copies of the Map which may be made and published from time to time.
- D. In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes made thereto, the Village Council may, by ordinance, adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The Map shall be identified by the signature of the Village President, attested by the Village Clerk, and bear the following words: This is to certify that this is the Official Zoning Map of the Village of Michiana Zoning Ordinance adopted on the 4th day of December 2006 and replaces and supersedes the Official Zoning Map which was adopted on the 4th day of December 2006 and any amendments made thereon." Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved together with all available records pertaining to its adoption and amendment.

§ 360-21. Interpretation of district boundaries.

- A. Clarification of district boundaries on the Official Zoning Map. District boundaries shall be as delineated on the Official Zoning Map.
- (1) Lakefront Residential District. To minimize variable interpretation of the Official Zoning Map, it is the purpose of this subsection to clarify the boundaries of the Lakefront Residential District as follows: All of that part of the Village consisting of Blocks 1, 2 and 3 of the Michiana Shores Subdivision No. 1; and Lots 16 through 29 of Block 2, Lots 1 through 20 of Block 3, Lots 1 through 11 of Block 4, and all of Blocks 5 and 6 of the Michigan Shores Subdivision.
 - (2) Public Lands District. To minimize variable interpretation of the Official Zoning Map, it is the purpose of this subsection to clarify the boundaries of the Public Lands District as follows: All of that part of the Village consisting of Lots 4, 5, 13, 14, and 18 through 21 of Block 1 of the Michiana Shores Subdivision No. 1; Lots 1 through 8 of Block 38 of the Michiana Shores Subdivision No. 7; Lots 5, 6, 10 through 25, 29 and 30 of Block 5 of the Michigan Shores Subdivision; and Lots 1 through 13, south half of 14, north half of 28, 29 through 31, and 36 through 39 of Block 6 of the Michigan Shores Subdivision.
 - (3) Village Residential District. To minimize variable interpretation of the Official Zoning Map, it is the purpose of this subsection to clarify that the boundaries of the Village Residential District are all of that part of the Village not otherwise included in the Lakefront Residential District or Public Lands District.
- B. Standards for interpretation. Where, due to the scale, lack of details or illegibility of the Official Zoning Map, or the lack of sufficient clarifying provisions in Subsection **A** above, there is an uncertainty, contradiction or conflict as to the intended location of any zoning district boundaries

shown thereon, interpretation concerning the exact location of district boundary lines shall be determined by the Zoning Board of Appeals upon written application. The Zoning Board of Appeals, in arriving at a decision on such matters, shall apply the following standards:

- (1) Boundaries indicated as approximately following roads shall be construed as following the right-of-way center lines of said roads or streets.
- (2) Boundaries indicated as approximately following lot lines shall be construed as following such lines.
- (3) Boundaries indicated as approximately parallel to the center lines of streets or highways shall be construed as being parallel thereto and at such distance therefrom as indicated on the Official Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on the Official Zoning Map.
- (4) Boundaries following the shoreline of a stream, lake or other body of water shall be construed to follow such shorelines and, in the event of change in the shorelines, shall be construed as moving with the actual shorelines; boundaries indicated as approximately following the thread of streams or other bodies of water shall be construed to follow such threads.
- (5) Where the application of the aforesaid rules leaves a reasonable doubt as to the boundaries between two districts, the district that presents the more restrictive provisions shall govern. "More restrictive provisions" shall be generally defined as provisions that place comparatively greater restrictions on the intensity and/or density of authorized uses and development.
- (6) Whenever any fill is placed in any lake or stream, the land thus created shall automatically and without further governmental action thenceforth acquire and be subject to the same zoning regulations as are applicable for lands to which the same shall attach or be adjacent.

§ 360-22. Permitted uses in zoning districts.

- A. Uses permitted in each zoning district. Except as may otherwise be provided in this chapter, uses of any existing lot, building and structure or any lot, building or structure established, including any addition, alteration or relocation of a building or structure, shall comply with Table 4-2. Table 4-2 identifies principal land uses permitted in each district. No land use shall be established on a lot except in conformance with such tables. In order to ensure all possible benefits and protection for the districts in this chapter, the table delineates whether a particular use permitted in a particular zoning district is a "use permitted by right" or a "special land use."
 - (1) Uses permitted by right. Uses permitted by right are the primary uses and structures specified for which the district has been established.
 - (2) Special land uses. Special land uses are uses and structures which have been generally accepted as reasonably compatible with the primary uses and structures intended for the district but could present potential injurious effects upon abutting land uses, the surrounding areas or the Village as a whole, or are otherwise unique in character, and therefore require special consideration in their review. All such uses shall be subject to a public hearing. See Article **XII** of this chapter.
- B. Accessory uses permitted in districts. Unless otherwise specified in this chapter, accessory uses which are clearly incidental to and customarily associated with the principal use of the property are permitted in all districts and shall conform to all applicable standards of this chapter, including § **360-31**, Accessory uses, buildings and structures, and § **360-39**, Home occupations.
- C. Prohibited uses. Any use of land not specifically permitted is prohibited, unless:
 - (1) The Zoning Board of Appeals is petitioned to make an interpretation of a use in question in accord with Article **VII**, and after an examination of the characteristics of such use, the Zoning

Board of Appeals rules that such use is directly comparable to a specifically permitted use in Table 4-2. If the Zoning Board of Appeals finds no comparable use, it shall so state.

- (2) The Zoning Board of Appeals issues a use variance according to Article **VII**, after being so petitioned according to the article's requirements.

D. Table 4-2, Permitted Principal Uses.

KEY:

- BR = Use permitted by right
 S = Special land use
 — = Prohibited use

Table 4-2: Permitted Principal Uses¹

Permitted Principal Uses	Zoning Districts		
	VR	LR	PL
Single-family dwellings	BR	BR	—
Family home day care	S	S	—
State-licensed residential facility ^[1]	BR	BR	—
Conservation Area, Class 1	BR	BR	BR
Conservation Area, Class 2	S	S	S
Public facilities owned or operated by the Village of Michiana, including but not limited to Village Hall; meeting rooms; offices of officials and staff; vehicle and equipment storage buildings; parks; communication towers; and police protection offices and facilities	—	—	BR
Public facilities owned or operated by other than the Village of Michiana.	—	—	S

Note:

1. All principal uses shall comply with the site development requirements in Table 4-3, unless otherwise specified in this chapter. In addition, all uses shall comply with all other site development regulations of this chapter.^[2]

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*

[2] *Editor's Note: Table 4-3, Site Development Requirements for Principal Land Uses, is attached to this chapter.*

§ 360-23. Site development requirements of zoning districts.

- A. All principal land uses shall comply with the site development requirements in Table 4-3,^[1] unless otherwise specified in this chapter. In addition, all uses shall comply with all other applicable site development provisions of this chapter, including, but not limited to:
- (1) Article **V**, Supplemental Provisions.
 - (2) Article **VIII**, Off-Street Parking and Loading.
 - (3) Article **IX**, Landscaping and Screening.
 - (4) Article **X**, Environmental Protection.

[1] *Editor's Note: Table 4-3, Site Development Requirements for Principal Land Uses, is attached to this chapter.*

- B. Variances from required site development standards may be granted by the Zoning Board of Appeals according to Article **VII**. Owners of nonconforming lots of record, structures or uses should refer to Article **VI**.
- C. No part of a setback area, yard or other open space required around, adjacent to or in connection with any use, building or structure for the purpose of complying with this chapter shall be included as part of a setback area, yard or other open space similarly required for any other use, building or structure.
- D. No setback area or lot existing at the time of adoption of this chapter shall be reduced in dimensions or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this chapter shall meet at least the minimum requirements established herein, including lot size and lot width.
- E. No portion of one lot shall be used in the creation of another lot unless each lot resulting from each such reduction, division or sale shall conform to all of the requirements established herein.
- F. Wherever any provision of the chapter imposes more stringent requirements, regulations, restrictions or limitations than are imposed or required by the provisions of any other law or ordinance, then the provisions of this chapter shall govern. Whenever the provisions of any other law or ordinance impose more stringent requirements than are imposed or required by this chapter, then the provisions of such other law or ordinance shall govern.
- G. Table 4-3, Site Development Requirements for Principal Land Uses, is attached to this chapter and made a part hereof.

Article V. Supplemental Provisions

§ 360-24. Purpose.

It is the purpose of this article to recognize that there are certain conditions concerning land uses that warrant specific exceptions, regulations or standards in addition to the regulations contained elsewhere in this chapter and to establish such exceptions, regulations and standards. The following supplemental provisions apply to all zoning districts unless otherwise indicated.

§ 360-25. Conditional approvals.

- A. Conditions on discretionary decisions. Conditions may be attached to the approval of a site plan, special land use, variance or other discretionary approval by the respective approval body designated in this chapter, such as in the case of site plan and special land use approval by the Village Council and variance approval by the Zoning Board of Appeals. Such conditions shall be based upon standards in this chapter and may be imposed to:
 - (1) Ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity.
 - (2) Protect the natural environment and conserve natural resources and energy.
 - (3) Ensure compatibility with adjacent uses of land.
 - (4) Promote the use of land in a socially and economically desirable manner.

- B. Requirements for valid conditions. Conditions imposed shall meet all of the following requirements:
- (1) Be designed to protect natural resources, the health, safety and welfare and the social and economic well-being of those who will use the land use or activity under consideration, the residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
 - (2) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
 - (3) Be necessary to meet the intent and purpose of this chapter, be related to the standards established in this chapter for the land use or activity under consideration, and be necessary to ensure compliance with those standards.
- C. Record of conditions and changes. Any conditions imposed shall be recorded in the record of the approval action. These conditions shall not be changed except upon the mutual consent of the approving authority and the property owner.
- D. Performance guarantees. Performance guarantees may be required to ensure compliance with conditions or discretionary decisions pursuant to the requirements of § 360-11.

§ 360-26. One single-family dwelling to a lot.

No more than one single-family dwelling unit shall be established on a lot. This provision shall not prohibit the lawful division of an existing lot to create one or more additional lots, provided such additional lots comply with Village ordinances, including the lot area, width and frontage standards of this chapter.

§ 360-27. Moving buildings.

No existing building or structure within or outside of the Village shall be relocated upon any lot within the Village unless the building or structure meets all provisions of this chapter and the Michigan Construction Code.

§ 360-28. Essential services.

Essential services shall be permitted as authorized and regulated by law and other ordinances of the Village, it being the intention hereof to exempt such essential services from the application of this chapter. For the purposes of this section, essential services shall be interpreted as the erection, construction, alteration or maintenance by public utilities or municipal departments of underground, surface or overhead gas, communication, telephone, electrical, steam, fuel or water transmission or distribution systems; collections, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories in connection therewith which are necessary for the furnishing of adequate service by such utilities or municipal departments for the general public health, safety, convenience or welfare. However, essential services shall not be interpreted to include communication towers, administration and office buildings, substations, structures which are enclosures or shelters for service equipment, maintenance depots, and aboveground features of similar character, and such uses and structures shall not be exempt from the application of this chapter.

§ 360-29. Frontage and access.

- A. All lots hereinafter created in the Village shall have frontage on a street and take their access from such frontage so as to provide safe, convenient vehicular access to all buildings on such lot, including for fire protection, other emergency vehicles, and any required off-street parking. No lot shall rely on a private easement for access to such lot. Such private easements for access, sometimes referred to as "private roads," are prohibited.
- B. All plans for structures to be erected, altered, moved or reconstructed, and use of premises within the Village, shall contain a plan for the proposed driveway access to the premises which shall be part of the plot plan (§ **360-9B**) or site plan (Article **XI**). Driveways shall comply with the following standards:
 - (1) Driveways shall be within 10° of perpendicular to the abutting street for a minimum distance of 10 feet from the street right-of-way.
 - (2) No driveway shall serve more than one single-family dwelling unit unless specifically approved otherwise by the Village Council upon a finding that such shared driveway shall not undermine emergency access and adequate easement provisions are in place to ensure continued and free access by all parties including the continued maintenance of the driveway.

§ 360-30. Single-family dwelling standards.

All single-family detached dwellings shall comply with the following standards:

- A. A single-family dwelling shall have a minimum floor area as required by the district in which it is located and be of such dimensions to accommodate a horizontal twenty-two-foot by twenty-two-foot imaginary square within the limits of the walls of such dwelling.
- B. A single-family dwelling shall comply in all respects with the Construction Code, including minimum heights for habitable rooms.
- C. A single-family dwelling shall be firmly attached to a permanent foundation constructed on the site in accordance with the Construction Code and shall have a wall of the same perimeter dimensions of the dwelling and constructed of such materials and type as required by the Construction Code for such dwelling. This Subsection **C** shall not prohibit pillar construction where such construction is necessary to minimize environmental degradation in association with wetlands or slopes in excess of 15%.
- D. A single-family dwelling shall be connected to a public sewer and water supply or to such private facilities approved by the Berrien County Health Department.
- E. A single-family dwelling shall contain storage capability area in a basement located under the dwelling, in an attic area, in closet areas, or in a separate structure similar to or of better quality than the principal dwelling, excluding any garage, which storage area shall be equal to 10% of the square footage of the dwelling or 100 square feet, whichever shall be less.
- F. Habitation of accessory structures. No accessory building or structure shall be used or occupied as a dwelling. This provision shall not prohibit sleeping accommodations above a detached garage as an accessory use to the dwelling on the lot, but shall only include a coffee maker, under-cabinet refrigerator and microwave.
[Amended 1-13-2017 by Ord. No. 2017-01]
- G. The exterior of a single-family dwelling shall be constructed of weather-resistant and nonglare materials. (See § **360-104** for the definition of "nonglare.") Such materials shall be designed to withstand exposure to normal year-round weather conditions, including sun, rain, snow and wind, without revealing signs of damage or deterioration that periodic maintenance would not otherwise correct. No exterior materials shall be used that, upon completion of construction, exhibit the material's brand name, manufacturer's name, or related advertising or specifications, so as to be visible from the lot lines.

- H. All subsequent additions to a dwelling shall be of similar or better quality workmanship as the original structure, including construction of a foundation as required herein.
- I. All construction required for a single-family dwelling shall be commenced only after a building permit has been obtained in accordance with the applicable Construction Code provisions and requirements.

§ 360-31. Accessory uses, buildings and structures.

A. Scope.

- (1) Accessory buildings, structures and uses, except as otherwise permitted in this chapter, shall be subject to the regulations of this section, in addition to premanufactured storage sheds and other similar portable storage enclosures.
- (2) No provisions of this section shall be interpreted as authorizing accessory uses, buildings or structures that do not conform to the Article **XIV** definitions of "accessory building" and "accessory use."
- (3) For the purposes of this section, a building shall be considered an accessory building where such building is not structurally attached to the principal building by either shared wall construction or by a fully and structurally enclosed corridor. However, a garage, irrespective of whether it is structurally attached to the principal building, shall be considered an accessory building.

B. Permit required. No accessory building or structure shall be erected prior to the issuance of a zoning compliance permit and any necessary building permit for such structure or building, including fences. Applications for accessory buildings and structures shall be administered and reviewed as part of the original or proposed revised plot plan (§ **360-9B**) or site plan (Article **XI**), depending upon the nature of the principal use of the lot and pursuant to § **360-85**.

C. Placement/setbacks.

- (1) No accessory building or structure shall be located in a front yard, except as follows:
 - (a) A lot that has frontage along Lake Michigan may include accessory buildings or structures in the front yard, provided they comply with the front yard setback for the dwelling.
 - (b) A trash bin of no greater than five feet in length and width and four feet in height may be stored in a front yard, provided it complies with the front yard setback for the dwelling.
- (2) Accessory buildings and structures shall comply with the district setbacks applicable to the principal building, according to Table 4-3.^[1] Such setbacks shall apply to raised decks, patios and terraces where any portion of such floor or ground surface is raised in excess of six inches above the surrounding grade.

[1] *Editor's Note: Table 4-3, Site Development Requirements for Principal Land Uses, is attached to this chapter.*
- (3) In no case shall an accessory building or structure be located so as to interfere with the proper functioning and maintenance of utilities, including existing and proposed backup septic drain fields.
- (4) See also § **360-76** regarding setbacks from White Creek.

D. Height. Accessory buildings shall not exceed 24 feet in height.

E. Area and lot coverage. Residential accessory structures and buildings shall not occupy more than a total cumulative area of 30% of the yard in which they are located. However, in no case shall accessory buildings, individually and collectively in all yards, excluding attached garages, exceed

the lesser of a total floor area of 1,000 square feet or the first-floor square footage of the dwelling, and in no case shall an accessory building or structure be erected that results in noncompliance with the lot coverage standards of Table 4-3,^[2] including both attached and detached garages.

[2] *Editor's Note: Table 4-3, Site Development Requirements for Principal Land Uses, is attached to this chapter.*

- F. Habitation of accessory structures. No accessory building or structure shall be used or occupied as a dwelling. This provision shall not prohibit sleeping accommodations above a detached garage as an accessory use to the dwelling on the lot, but in no case shall such accommodations include kitchen facilities or appliances, such as a convection or microwave stove, refrigerator or freezer, nor shall such accommodations be used by other than members of the family residing in the dwelling on the lot.
- G. Prior to a principal structure. No accessory building or structure shall be erected on a lot prior to the establishment of a principal building unless the necessary approvals and permits have been issued for both and the foundation of each, whether poured concrete or otherwise, is undertaken simultaneously. No construction of an accessory building shall extend above its foundation prior to the completion of the foundation for the principal building.

§ 360-32. Prohibition of recreational vehicles as dwellings.

In no case shall a trailer, motor home or other recreational vehicle be considered or used for a dwelling.

§ 360-33. Temporary buildings and structures.

Temporary buildings and structures are prohibited except in the case of a field office and tool shed associated with a new construction project located on the same lot of such construction project, provided such temporary buildings are removed within seven days of the issuance of a certificate of occupancy, but in no case shall such buildings be located on the lot for more than six months.

§ 360-34. Residential fences and walls.

[Amended 8-10-2012 by Ord. No. 2012-02; 1-13-2017 by Ord. No. 2017-01; 7-13-2018 by Ord. No. 2018-02]

Residential fences and walls shall comply with the following standards:^[1]

- A. No fence or wall shall be erected in a front yard or corner of a yard where property fronts a Village street on more than one side. No fence may be built beyond the front plane of the home. (See Exhibit No. 1^[2]) No fencing is allowed on any property that directly fronts Lake Michigan.
[2] *Editor's Note: Exhibit No. 1 is on file in the Village offices.*
- B. No fence or wall exceeding six feet in height shall be erected in a side or rear yard, and such fence must be located within the property lines of the property and may not be placed on any public street, Village right-of-way, private road, easement, or on a neighboring property. Fences or walls may not exceed the total height of six feet six inches to the top of the finished fence post. Height measurements will be measured from the natural grade of the land and, if placed on a man-made elevated surface, that elevation above the natural grade will be considered in the total fence or wall height measurement. When natural grade is questioned, the Village Council reserves all rights to establish the final fence height.
- C. In the case where a proposed fence is within 20 feet of a dwelling on an abutting lot, the finished side of a fence or wall shall face the abutting lot.
- D. Fences and walls with barbs, spikes, nails or other sharp or electrified devices are prohibited.

- E. Fences are to be constructed of wood, metal, aluminum and should be of a material designed to last at least 15 years. Fences shall be neutral color unless approved by the Village Council. Examples of a fence would include, but not be limited to, the following; a chain link of aluminum or metal posts, traditional board and batten fence, a traditional fence with lattice top, a full lattice or trellis fence with posts or a similar structure, a scalloped or arched picket fence, a solid wood, milled stockade fence, a French or Gothic picket fence, or arched or scalloped picket fence. Additionally, if a fence or wall, or a related structure, serves to separate one area, e.g., a pool area, from another area, e.g., the area that is not the pool, such structure shall be defined as a fence.
- F. Walls are to be constructed of man-made, wood or natural stone material and shall be as neutral in color as possible unless approved by the Village Council.
- G. All fences and walls are required to have the necessary building permits from the Building Inspector and a Village building certificate approved before work can begin.
- H. A gate must be freestanding and is commonly not attached to a fence, and the gate cannot exceed five feet but the gate posts can be 5 1/2 feet high. For clarity, a gate serves to define the entrance to something, such as a driveway or walkway. They are used, for example to prevent vehicles from using a driveway as a place to turn around.

[1] *Editor's Note: See § 360-35 for pool fencing regulations.*

§ 360-35. Swimming pools.

[Amended 8-10-2012 by Ord. No. 2012-02]

- A. Permit/application. No outdoor swimming pool shall be erected prior to the issuance of the zoning compliance certificate from the Zoning Administrator and the necessary building permits from the Building Inspector. Application for a zoning compliance certificate shall be made to the Zoning Administrator on a form for such purpose and shall be accompanied by a plot plan (§ 360-9B) that identifies the location of the pool, adjacent buildings, fencing, walls and gates.
- B. Location and setbacks.
 - (1) No pool or pool fencing or wall shall be located in a front yard.
 - (2) No pool shall be located under a service drop conductor or other utility wires.
 - (3) Pools shall comply with the minimum required side and rear yard setbacks for dwellings in the district, but in no case shall a pool in the Lakefront Residential District extend more than 25 feet lakeward from the nearest point of the dwelling to the lake.
- C. Fencing and walls. All swimming pools shall be completely enclosed by wood, metal, aluminum or masonry fence or wall of not less than four feet in height nor more than six feet in height from the natural grade as described in § 360-34. No fence or wall may exceed a total height of six feet six inches from the existing natural grade to the top of the finished fence/wall posts. Any fence/wall constructed in the Lakefront Residential District shall not have any fence/wall height that exceeds four feet in height from the existing natural grade as defined in § 360-64B. Such fencing may be omitted where building walls abut the pool area, provided that the entire remaining perimeter of the pool area is either fenced or walled. All openings in any such fence/wall shall be equipped with a self-closing, self-latching gate.

§ 360-36. Condominium subdivisions.

Condominiums shall not be permitted to be built or operated in any of the Village's zoning districts.

§ 360-37. Lighting.

No exterior lighting shall be erected except in conformance with Chapter **206**, Lighting, of the Code of the Village of Michiana, and any subsequent regulations addressing the same.

§ 360-38. Vibration.

Operating any devices that create vibrations that are typically discernible by human senses at or beyond the lot of the source shall be prohibited. Pile driving is prohibited. All piling shall be drilled and poured in place. For the purposes of this section, "typically discernible by human senses" means vibrations, motion of such character to cause a typical person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or observation of moving objects.

§ 360-39. Home occupations.

The regulation of home occupations as provided herein is intended to secure flexibility in the application of the requirements of this chapter, but such flexibility is not intended to allow the essential residential character of property in the Village, in terms of use and appearance, to be changed by the occurrence of nonresidential activities associated with such occupation. A home occupation, as defined in Article **XIV**, may be established as an accessory use in a dwelling only, and no zoning compliance certificate shall be necessary. Such activity shall comply with the following standards and regulations:

- A. All aspects of the occupation shall be carried on inside of the dwelling.
- B. The home occupation shall not occupy an area greater than 20% of the floor area of the dwelling.
- C. Traffic generated by a home occupation shall not be greater in volume than is normally associated with a single-family dwelling. Any need for parking generated by the home occupation shall be met off the street and other than in the required front yard setback for the dwelling, although motor vehicles may be parked in an existing driveway if it is of sufficient size.
- D. The occupation shall be clearly secondary and incidental to the use of the dwelling as a place of residence and shall not result in a change to the essential character of the premises including both the dwelling and the surrounding yard areas.
- E. There shall be no external or internal alterations that are not customary in residential areas, and there shall be no evidence of the home occupation outside of the dwelling, including storage areas for supplies, trash or other waste materials, or noise, odors, vibration, fumes or other conditions detectable by normal sensory perception.
- F. The home occupation shall employ no persons on the premises during the ordinary course of business, except residents of the dwelling on the premises.
- G. There shall be no display or sale of goods on the premises except as may be prepared within the dwelling or provided as incidental to the service or profession conducted within. A retail showroom, sales area, outlet or similar facility is prohibited.
- H. The home occupation shall not entail the use or storage of explosive, flammable or otherwise hazardous materials or waste in excess of quantities normally customary and incidental to a single-family dwelling and lot. No equipment or process shall be used which creates interference in any radio, television, telephone or other communication devices off the premises, including interruptions or interference of normal computer operations in nearby households, or cause fluctuations in line voltage off the premises.

§ 360-40. Cleanup and property damage deposit.

The owner/contractor shall deposit with the Village Treasurer a monetary deposit in an amount to be determined by the Village Council to cover damage/repair or cleanup costs required to be made on public property. The balance of such monies to be returned after a certificate of occupancy has been issued. No certificate of occupancy shall be issued until full restoration of the damage to public property has been made to the satisfaction of the Village Council.

§ 360-41. Cleanup of streets.

All streets shall be cleaned of dirt and debris at the close of each workday when such materials were due to the contractor's activities.

§ 360-42. Tear-down structures and buildings.

Tear-down buildings or structures shall be placed on the same footprint as the removed structure unless approved by the Village Council for a larger footprint.

Article VI. Nonconforming Lots, Uses and Structures

§ 360-43. Purpose.

It is recognized that there exist lots, structures and uses of land and structures within the districts established by this chapter and subsequent amendments which were lawful before this chapter was passed or amended, which would be prohibited, regulated or restricted under the terms of this chapter or subsequent amendment. It is the purpose of this article to permit legal nonconforming lots, structures and uses to continue until they are removed or discontinued and to provide for their maintenance and repair but not their expansion, enlargement, extension or other alteration which in any way increases nonconformity, except as otherwise provided by this article.

§ 360-44. Nonconforming lots.

[Amended 7-12-2013 by Ord. No. 2013-03]

Notwithstanding limitations imposed by other provisions of this chapter, any use and customary accessory structures may be erected on any single lot of record in existence at or before the effective date of the adoption of this chapter by the Village Council, where such use is an authorized use by right in said district according to Article IV, even though such lot fails to meet the requirements for area, width and/or frontage that are generally applicable in the district. However, all yard dimensions, setbacks and other requirements not involving area, width and/or frontage shall conform to the regulations for the district in which such lot is located unless a variance is obtained through approval of the Zoning Board of Appeals.

§ 360-45. Nonconforming uses.

Where, at the effective date of adoption or amendment of this chapter, a lawful use of land exists that is made no longer permissible under the terms of this chapter as enacted or amended, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No nonconforming use shall be enlarged or increased in area or bulk nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this chapter. However, a nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use and which existed at the time of adoption or

- amendment of this chapter, but no such use shall be extended to occupy any land outside such building.
- B. No nonconforming use shall be moved in whole or in part to any other portion of the lot occupied by such use at the effective date of adoption or amendment of this chapter.
 - C. A change of tenancy or ownership of a nonconforming use is allowed, provided there is no increase in the degree of nonconformance of the nonconforming use.
 - D. Irrespective of other requirements of this chapter, if no structural alterations are made, any nonconforming use of a structure and lot may be changed to another nonconforming use of less nonconformance, provided that the Zoning Board of Appeals, either by general rule or by making findings in the specific case, shall find that the proposed use is more appropriate to the district than the existing nonconforming use. In permitting such change, the Zoning Board of Appeals may require appropriate conditions and safeguards in accord with the purposes of this chapter. Where a nonconforming use, structure or use and structure in combination is hereafter changed to a less nonconforming character, it shall not thereafter be changed to a greater nonconforming character.
 - E. Any nonconforming use of land or structure, or combination thereof, which is superseded by a permitted use shall thereafter conform to the regulations for the district in which such use is located, and the nonconforming use may not thereafter be resumed.
 - F. If a nonconforming use of a lot ceases for any reason for a period of more than 180 consecutive days, the subsequent use of such lot shall thereafter conform to the regulations and provisions of this chapter for the district in which such lot is located.

§ 360-46. Nonconforming structures.

Where a lawful structure exists at the effective date of adoption or amendment of this chapter that could not be built under the terms of this chapter or subsequent amendment by reason of restrictions on area, lot coverage, height, setbacks, yards or other characteristics of the structure or location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No nonconforming structure may be enlarged or altered in any way which increases its nonconformity. For clarification purposes and by example only, an increase in the height or bulk/cubic content of that portion of a building which encroaches into a required setback, and is therefore nonconforming, constitutes an increase in nonconformity.
- B. Should a nonconforming structure be destroyed by any means to an extent of more than 50% of its replacement value, exclusive of foundations, it shall not be reconstructed except in conformity with the provisions of this chapter, including the respective site development standards for the district in which it is located, except as provided in Subsection **B(1)** below. In identifying the extent of destruction and the cost to replace the damaged structure, the Zoning Administrator shall seek a written opinion from a qualified building appraiser, and the opinion shall include the basis for the opinion.
 - (1) Nothing in this subsection shall prohibit the replacement of a nonconforming structure on the same foundation, provided the nonconforming aspect of the nonconforming structure does not exceed 20% of the required standard, such as the standard for setback, height and lot coverage. For clarification and by example only, a structure encroaching five feet into a required ten-foot side yard setback, if destroyed, could be replaced on the same foundation, provided the encroachment was reduced to two feet (20% of 10 feet). This subsection shall not be interpreted as prohibiting the repair and replacement of a nonconforming swimming pool to its same nonconformity prior to such repair or replacement, nor shall it be interpreted as authorizing any increase in nonconformity by any repair or replacement structure. See Subsection **A** above.

- C. Should such structure be moved for any reason for any distance, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- D. Where nonconforming status applies to a structure and use in combination, removal or destruction of the structure to an extent of more than 50% of its replacement value, exclusive of foundations, shall eliminate the nonconforming status of the land, and all subsequent uses and structures on the land shall conform to the applicable district regulations.

§ 360-47. Repairs and maintenance.

- A. Nonconforming structure. A nonconforming structure may be maintained and repaired, provided such repair and maintenance does not have the effect of increasing its nonconformity.
- B. Nonconforming use. 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 10% of the then-building's replacement cost prior to the initiation of repairs, exclusive of foundations, provided that the cubic content of the building as it existed at the time of passage or amendment of this chapter shall not be increased.
- C. Unsafe building. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by the Building Inspector.

§ 360-48. District changes.

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of another classification, the provisions of this chapter shall also apply to any existing lots, uses and structures that become nonconforming as a result of the boundary changes.

§ 360-49. Illegal nonconformities.

Nonconforming lots, uses and structures existing at the effective date of this chapter or amendment thereto, that were established without approval of zoning compliance or without a valid building permit, or those nonconforming lots, uses and structures that cannot be proved conclusively as existing prior to the effective date of this chapter or amendment thereto, shall be declared illegal nonconforming uses and are not entitled to the status and rights accorded legally established nonconforming uses by this chapter.

Article VII. Zoning Board of Appeals

§ 360-50. Purpose.

The purpose of this article is to establish a Zoning Board of Appeals (ZBA) pursuant to Public Act 110 of 2006,^[1] including its responsibilities, procedures and standards of review, to ensure that the objectives of this chapter are fully and equitably achieved.

[1] *Editor's Note: See the Zoning Enabling Act, MCLA § 125.3601 et seq.*

§ 360-51. Creation and membership.

The Zoning Board of Appeals shall consist solely of the members of the Village Council, and they shall sit as the Zoning Board of Appeals members for their respective entire terms of office as members of

the Village Council.

§ 360-52. Organization.

- A. Rules of procedure and officers. The ZBA may adopt rules of procedure for the conduct of its meetings and the implementation of its duties. The ZBA shall annually elect from its members a chairperson, vice chairperson and secretary.
- B. Meetings and quorum. Meetings of the ZBA shall be held at the call of the Chairperson and at such other times as the ZBA in its rules of procedure may specify. A majority of the total regular membership of the ZBA shall comprise a quorum. The ZBA shall not conduct official business unless a quorum is present. All meetings shall be open to the public and conducted pursuant to the requirements of the Open Meetings Act.^[1]
 [1] *Editor's Note: See MCLA § 15.261 et seq.*
- C. Oaths and witnesses. The Chairperson or, in his or her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.
- D. Records. The ZBA shall maintain a record of its proceedings, which shall be filed in the office of the Village Clerk, and shall be a public record according to the Freedom of Information Act. All minutes shall state the grounds for each determination, including findings of fact and conclusions.

§ 360-53. Jurisdiction.

The ZBA shall act upon questions as they arise in the administration of this chapter and take other actions as specified in this chapter. The ZBA shall perform its duties and exercise its powers as provided in Public Act 110 of 2006. The ZBA shall not have the power to alter or change the zoning district classification of any property, nor make any change in the terms or intent of this chapter, but shall have the power to act on those matters so specified in this chapter including ordinance interpretations, variances and the review of any order, requirements, decision or determination made by an administrative official or body charged with the enforcement of this chapter.

§ 360-54. Appeals for administrative reviews.

- A. Authority. The ZBA shall hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the Zoning Administrator or by any other body or official in administering or enforcing the provisions of this chapter. Within this capacity, the ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination of such body or official. The ZBA shall have all the powers of the body or official from whom the appeal is taken. However, in no case shall the ZBA hear an appeal of a special land use decision.
- B. Standards. The ZBA shall reverse or otherwise modify the decision of such body or official from whom the appeal is taken only if it finds that the action or decision appealed:
 - (1) Was arbitrary or capricious; or
 - (2) Was based upon an erroneous finding of a material fact; or
 - (3) Constituted an abuse of discretion; or
 - (4) Was based upon erroneous interpretation of the Zoning Ordinance or zoning law; or
 - (5) Did not follow required procedures.

- C. Application requirements. A written application for an appeal for administrative review shall be completed and filed with the Zoning Administrator on forms established for that purpose within 21 days after the date of the meeting during which the meeting minutes addressing the decision being appealed was approved. Application for an administrative review shall specify, at a minimum, the name, address and phone number of the applicant; the decision being appealed; and the basis for the appeal. See § **360-13** regarding application fees.
- D. Record of facts; transmission of record. Upon receipt of an application, the officer or body from whom the appeal is taken shall transmit to the ZBA all papers constituting the record upon which the action appealed from was taken. In hearing and deciding appeals under this subsection, the ZBA's review shall be based upon the record of the administrative decision being appealed, and the ZBA shall not consider new information which had not been presented to the administrative official or body from whom the appeal is taken.

§ 360-55. Interpretations.

- A. Authority. The ZBA shall hear and decide upon requests to:
 - (1) Interpret the provisions of this chapter when it is alleged that certain provisions are not clear or that they could have more than one meaning. In deciding upon such request, the ZBA shall ensure that its interpretation is consistent with the intent and purpose of the chapter, the article in which the language in question is contained, and all other relevant provisions in the chapter.
 - (2) Determine the precise location of the boundary lines between zoning districts. (See Article **IV**.)
 - (3) Classify a use which is not specifically mentioned as a part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district. Where there is no comparable permitted or prohibited use, the ZBA shall so declare, the effect being that use is not permitted in the Village until or unless the text of the chapter is amended to permit it.
- B. Consultation. Prior to deciding a request for an interpretation, the ZBA may confer with Village staff and consultants to determine the basic purpose of the provision subject to interpretation and any consequences which may result from differing decisions. Such consultations, when in the presence of a quorum of the ZBA, shall comply with the Open Meetings Act.
- C. Application requirements. A written application for an interpretation shall be completed and filed with the Village Clerk on forms established for that purpose. Application for an interpretation shall specify, at a minimum, the name, address and phone number of the applicant; the standard, regulation or provision requiring an interpretation; and a plot plan, site plan or similar drawing illustrating the application or relevance of such interpretation. See § **360-13** regarding application fees.

§ 360-56. Variances.

- A. Authority. The ZBA shall have the power to authorize specific variances from specific site development requirements contained in this chapter, such as lot area and width requirements, building height and bulk requirements, setback requirements, yard width and depth requirements, off-street parking and loading space requirements, and sign requirements, and from use of land requirements.
- B. Standards.
 - (1) Required findings for nonuse variance (dimensional variance). The ZBA shall have the power to authorize variances from specific site development requirements, provided that all of the

standards listed below are met and the record of proceedings of the ZBA contains evidence supporting each conclusion:

- (a) That there are practical difficulties that prevent carrying out the strict letter of this chapter due to unique circumstances, such as narrowness, shallowness, shape or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same district, and shall not be recurrent in nature. These difficulties shall not be deemed economic but shall be evaluated in terms of the use of a particular parcel of land.
 - (b) That the practical difficulty or special condition or circumstance does not result from actions of the applicant.
 - (c) That the variance will relate only to property described in the variance application.
 - (d) That the variance will be in harmony with the general purpose and intent of this chapter and will not cause a substantial adverse effect upon surrounding property, property values and the use and enjoyment of property in the neighborhood or district.
 - (e) That strict compliance with site development standards, such as lot area, setbacks, frontage, height and parking spaces would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
 - (f) That the variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the practical difficulties.
- (2) Required findings for use variance. The ZBA shall have the power to authorize variances from requirements of this chapter pertaining to permitted uses of land, provided that all the required findings listed below are met and the record of proceedings of the ZBA contains evidence supporting each conclusion.
- (a) Applicant's property cannot be used for the purposes permitted in the zoning district.
 - (b) Applicant's plight is due to unique circumstances peculiar to the property and not to general neighborhood or surrounding conditions.
 - (c) Applicant's proposed use would not negatively impact or alter the essential character of the area.
 - (d) Applicant's plight has not been self-created.
- C. Application requirements. Application for a variance shall specify, at a minimum, the name, address and phone number of the applicant; the legal description for the lot subject to the variance; a specification of the chapter's standards for which a variance is sought and the specific variance being requested; and a plot plan, site plan or similar drawing that adequately illustrates the proposed improvements to the lot for which the variance is requested. In all variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or evidence from which the ZBA may make the required findings, including any information the applicant may chose to submit to demonstrate conformance with the standards of Subsection **B** above.

§ 360-57. Procedures.

- A. Application. Written application to the ZBA shall be completed and filed with the Village Clerk on forms established for that purpose.
- B. Stay; record of facts; transmission of record. An appeal for an administrative review filed under § **360-54** stays all proceedings in furtherance of the action appealed from unless the officer or body from whom the appeal is taken certifies to the ZBA, after the notice of appeal is filed, that by

reason of facts stated in the certificate a stay would, in the opinion of the officer or body, cause imminent peril to life or property. If such a certification is filed, the proceedings shall only be stayed by a restraining order. A restraining order may be granted by the Board of Appeals or by the Circuit Court, on application, on notice to the officer or body from whom the appeal is taken and on due cause shown. Upon receipt of an application for an administrative appeal, the officer or body from whom the appeal is taken shall transmit to the ZBA all papers constituting the record upon which the action appealed from was taken.

- C. Hearing. Upon receipt of an application, the Chairperson of the ZBA shall fix a reasonable time and date for a hearing, taking into account adequate time for members of the ZBA to review the application prior to such hearing. Notice of the hearing shall comply with § 360-16. See § 360-12 regarding timely action. At the hearing, any party may appear in person or by agent or attorney.
- D. Decision. The Zoning Board of Appeals shall have up to 60 days to review a variance request before making a recommendation to the Village Council. The ZBA shall render a decision in the form of a motion or resolution containing a full record of the findings and determination of the ZBA. The concurring vote of a majority of the members of the ZBA shall be necessary to grant a nonuse or dimensional variance; to make an interpretation of the chapter; to reverse, affirm or modify an order, requirement, decision or determination of an administrative official or body; or to decide in favor of the applicant on any matter upon which they are required to pass under or to effect any variation in this chapter, except that a minimum 2/3 vote of the ZBA membership is necessary to grant a use variance. The ZBA shall state the grounds for each decision, and such grounds shall be placed in the record.
- (1) Interpretations. A decision providing an interpretation may be accompanied by a recommendation to the Planning Commission for consideration of an amendment of the Zoning Ordinance.
 - (2) Administrative appeals. In hearing and deciding administrative appeals, the ZBA's review shall be based upon the record of the administrative decision being appealed, and the ZBA shall not consider new information which had not been presented to the administrative official or body from whom the appeal is taken.
 - (3) Variances.
 - (a) In granting any variance, the ZBA may prescribe appropriate conditions and safeguards in conformity with this chapter. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter. See § 360-25 regarding conditional approvals.
 - (b) A variance shall become null and void unless the construction authorized by such variance has been commenced within six months after the granting of the variance; and the occupancy or use of the land, structure and/or building for which the variance was granted has taken place within one year after the granting of the variance. The ZBA may extend this time limit upon its finding that no substantial changes have occurred to ordinance regulations, abutting properties or other conditions that undermine the basis for the original issuance of the variance.
 - (c) No application for a variance which has been acted upon shall be resubmitted for a period of one year from the date of the last denial, except on the grounds of newly-discovered evidence or proof of changed conditions having bearing on the basis for the original action, in the discretion of the ZBA.

§ 360-58. Review by Circuit Court.

The decision of the ZBA shall be final. However, any party aggrieved by an order, determination or decision of the ZBA may obtain a review thereof both on the facts and the law in the Circuit Court. The filing of an appeal to the Circuit Court shall be filed within 30 days after the ZBA certifies its decision in

writing or approves the minutes of its decision. The Circuit Court shall review the record and decision of the ZBA to ensure that the decision:

- A. Complies with the Constitution and laws of the state.
- B. Is based upon proper procedure.
- C. Is supported by competent, material and substantial evidence on the record.
- D. Represents the reasonable exercise of discretion granted by law to the ZBA.

Article VIII. Off-Street Parking and Loading

§ 360-59. Purpose.

It is the purpose of this article to establish standards and requirements to ensure that parking spaces shall be adequately provided and maintained by each property owner in every zoning district for the off-street parking of motor vehicles to prevent undue interference and hazards to the public. (See Article **XIV** for the definitions of "off-street parking" and "on-street parking.")

§ 360-60. Single-family dwellings.

A single-family dwelling shall be provided with a minimum of two off-street parking spaces on the same lot as the dwelling.

§ 360-61. Nonresidential uses.

Design. All off-street parking areas for nonresidential uses shall be designed, constructed and maintained in accordance with the following standards and requirements:

- A. Marking and designation. Parking areas shall be so designed and marked as to provide for orderly and safe movement and parking of vehicles. Paved parking spaces shall be marked with striping.
- B. Driveways. Adequate ingress and egress to the parking area by means of clearly limited and defined drives shall be provided. Two-way drives for ingress and egress to a parking area shall be not less than 25 feet wide, and all turning radii shall comfortably accommodate vehicle turning patterns.
- C. Surface. Off-street parking areas shall be of a gravel or paved surface. The site plan approval body may require such areas to be paved with concrete, bituminous asphalt or similar material, in the case where it is determined that the amount or type of vehicular traffic warrants such surfacing, to minimize noise or dust nuisances or ensure safe pedestrian or emergency vehicle access.
- D. Drainage. All required off-street parking areas shall provide adequate surface drainage facilities to collect and properly manage stormwater runoff. Off-street parking areas shall be drained so as to prevent direct drainage onto abutting properties and public streets.
- E. Location; setback.
 - (1) Off-street parking areas and access drives shall comply with the required yard setbacks for principal buildings in the respective district.
 - (2) Off-street parking areas shall be designed and arranged to prohibit a parked vehicle from being closer than five feet to a building, including any bumper overhang.

- F. Use of off-street parking areas. Off-street parking areas shall be reserved for the parking of vehicles used to service the establishment to which it is accessory and by its patrons. No commercial repair work, servicing, storage, selling or any other activity shall be conducted in an off-street parking area.
- G. Parking spaces and maneuvering lanes. Each parking space within an off-street parking area shall be provided with adequate access by means of maneuvering lanes. The layout of off-street parking areas shall comply with the following minimum standards:

Parking Pattern (degrees)	Maneuvering Lane Width		Parking Space Width	Parking Space Length
	One-Way (feet)	Two-Way (feet)	(feet)	(feet)
0° (parallel)	11	18	9	23
30° to 53°	13	22	9	20
54° to 74°	14	22	9	20
75° to 90°	15	23	9	20

- (1) Where a parking space is curbed, the vehicle overhang off the curb may be credited as two feet if adjacent to landscaping or adjoining a sidewalk at least seven feet wide.

- H. Landscaping and screening. See Article IX.
- I. Required number of spaces. The number of off-street parking spaces required for a nonresidential use, that shall be located on the same lot, shall be within the range of suggested spaces as published from time to time by the American Planning Association, Institute of Transportation Engineers, or other nationally recognized association, and based upon the particular operational characteristics of the use in question.
- (1) Exceptions. The designated site plan review body may waive a portion or all of the number of required off-street parking spaces for a nonresidential use if, after review, it finds the following conditions to be true:
- There are adequate public parking facilities nearby to accommodate the increased parking demand, including on-street parking.
 - The waiving of the off-street parking requirements will not result in a visible increase in the use of nearby residential neighborhoods for off-street parking purposes.
 - The waiving of the off-street parking requirements will not result in a visible increase in traffic congestion or traffic hazards.
 - Significant practical limitations exist that effectively prohibit providing the required parking spaces on the development site.
- (2) Building additions or other increases in floor area. Whenever a use requiring off-street parking is increased in area or when interior building modifications result in an increase in capacity for any premises use, additional parking spaces shall be provided and maintained in the proper ratio to the increased floor area or capacity.
- (3) Decrease in parking areas. No off-street parking area which exists at the time this chapter becomes effective, or which subsequent thereto is provided for the purpose of complying with this chapter, shall thereafter be relinquished or reduced in any manner below the number required unless additional parking area or space is provided sufficient to meet the requirements of this chapter.

§ 360-62. Loading and unloading spaces.

There shall be provided adequate space and circulation for standing, loading and unloading services where the operational characteristics of a nonresidential use necessitate such services. Such service areas shall be located and screened to minimize visual and other nuisances upon adjacent land uses.

Article IX. Landscaping and Screening

§ 360-63. Purpose.

It is the purpose of this article to establish standards and requirements to assure adequate provisions are made for landscaping and screening of nonresidential uses so that such uses minimize noise, air and visual pollution; improve the appearance of off-street parking and other vehicular use areas; assure adequate buffering between differing uses; support the desired community character along property adjoining public rights-of-way; prevent soil erosion and soil depletion; and protect and preserve the appearance, character and value of the community as a whole and its residential and nonresidential areas.

§ 360-64. Application.

The requirements of this article shall apply to those uses for which site plan approval is required under Article **XI**, Site Plan Review, and any other use so specified in this chapter. No site plan shall be approved unless said site plan shall show landscaping, buffer areas, and screening consistent with the requirements set forth in this chapter. No site plan that provides for the removal of one or more protected trees under Chapter **323**, Trees, of the Code of the Village of Michiana, shall be approved prior to the Tree Inspector's approval of such tree removals according to Chapter **323**. This article shall not apply to single-family dwellings.

§ 360-65. Landscape plan required.

A detailed landscape plan is required to be submitted as part of a site plan (see Article **XI**). The plan shall be prepared at a minimum scale of one inch equals 20 feet and shall identify all buffer areas (see §§ **360-66** and **360-67**). The landscape plan shall include, but not necessarily be limited to, the clear delineation of the following items:

- A. Proposed plant location, spacing and size and descriptions for each plant type proposed for use to meet the requirements of this chapter.
- B. Identification of grass and other proposed ground cover and method of planting.
- C. Existing and proposed contours.
- D. Planting and staking details in either text or drawing form to ensure proper installation of proposed plant materials, including significant construction details to resolve specific site conditions, such as tree wells to preserve existing trees or culverts to maintain natural drainage patterns.
- E. Identification of existing trees and vegetative cover to be preserved and those areas of trees six inches or larger in diameter measured five feet from ground surface to be removed.

§ 360-66. Buffer areas.

- A. Side and rear yard buffer areas. A minimum ten-foot-wide buffer area for screening and landscaping shall be established along all side and rear lot lines. The buffer area shall not be used for storage or used in any other manner except for screening and landscaping purposes. The buffer area shall consist of tree and shrub plantings and shall include a fence, wall and/or berm

where determined necessary by the site plan approving body to effectively mitigate the impacts for which the screening is deemed desirable. In no case shall tree plantings be spaced less than an average distance of 50 feet apart and shrub plantings less than an average distance of 30 feet apart, though such plantings need not be evenly spaced. At the time of their planting, evergreen trees shall be a minimum of six feet in height and deciduous trees shall have a caliper of at least 2 1/2 inches measured five feet above the ground surface and be a minimum of 12 feet in height.

- B. Front yard buffer areas. A minimum ten-foot-wide buffer area along the front lot line shall be established and landscaped with a minimum of one tree meeting the minimum size requirements specified in § 360-66A above for each 50 lineal feet, or portion thereof, of frontage adjoining the street right-of-way. The remainder of the front yard buffer area shall be landscaped in grass, shrubs, trees and/or other ground cover. Accessways from public rights-of-way through required buffer areas shall be permitted, but such accessways shall not be subtracted from the lineal dimension used to determine the minimum number of required trees.

§ 360-67. Parking lot landscaping and screening.

- A. Tree plantings. There shall be provided a minimum of one deciduous tree of at least two-and-one-half-inch caliper for every six parking spaces or 50 linear feet of parking lot edge, whichever is greater. Such trees shall be located within parking islands or within five feet of the edge of the parking lot. A minimum distance of three feet shall be established between proposed tree or shrub plantings and the edge of curbing and pavement.
- B. Screening. In addition to Subsection A above, and where a parking lot contains six or more parking spaces, a vegetative screen shall be installed to screen views to the parking area. All shrub materials shall be such height and spacing to effectively screen a minimum of 50% of the parking lot border to a minimum height of three feet within two years of their planting, based on reasonably anticipated growth patterns.

§ 360-68. Minimum standards of landscape elements.

- A. Quality and composition. Plant material and grasses shall be of generally acceptable varieties and species, be comprised predominantly of species indigenous to the Michiana area, be free of insects and diseases, and conform to the most current standards of the American Association of Nurserymen. Plant species which are generally considered undesirable due to limited disease tolerance, low wood strength and/or high wood-splitting tendencies, such as box elder, mulberry and willows, are not permitted unless specifically authorized otherwise by the site plan approving body. A mixture of plant species shall be required as a protective measure against insect and disease infestation.
- B. Existing trees to remain. If existing plant material is labeled "to remain" on site plans by the applicant or required by the site plan approval body, protective techniques, such as, but not limited to, fencing or barriers placed at the dripline around the perimeter of the plant material, shall be indicated on the site plan. No vehicle or other construction equipment shall be parked or stored within the dripline of any plant material intended to be saved. In the event that existing healthy trees which are used to meet the minimum requirements of this chapter or those labeled to remain are cut down, destroyed, damaged or excavated at the dripline, as determined by the site plan approving body, the applicant shall replace them with trees of similar approximate size unless the site plan approving body determines that, due to practical limitations, replacement shall be based on the use of multiple trees of less size.

§ 360-69. Installation, maintenance and completion.

All landscaping required by this chapter shall be planted prior to obtaining a certificate of occupancy or, where the applicant can demonstrate to the site plan approving body that seasonal conditions prohibit the installation of the plant material prior to desired occupancy, the plant material shall be installed within six months of receipt of such certificate. All landscaping and landscape elements shall be planted and earthmoving or grading performed in a sound professional manner and according to recommended good planting and grading procedures. All plant material shall be maintained in a healthy condition and free of refuse and debris. All unhealthy and dead material shall be replaced within one year of damage or death or the next appropriate planting period, whichever comes first.

§ 360-70. Fencing and walls construction.

[Amended 7-13-2018 by Ord. No. 2018-02]

All required fencing and walls shall be constructed and maintained in a sound manner to assure long-term structural integrity and visual character, and be of such height to adequately mitigate the impacts for which the screening is deemed desirable. Site plans shall include all necessary construction details to illustrate compliance with this requirement. No fence or wall shall exceed six feet in height unless expressly authorized as part of an approved site plan.

§ 360-71. Waivers and modifications.

Any of the requirements of this article may be modified through site plan review proceedings, provided the approving body first makes a finding that specifically identifies characteristics of the site or site vicinity that would make required buffer areas, fencing or screening unnecessary, inappropriate or ineffective, or where it would impair vision at a driveway or street intersection.

Article X. Environmental Protection

§ 360-72. Purpose.

It is the purpose of this article to promote a healthy environment in the Village of Michiana as it relates to the Village's natural resources, sensitive ecosystems and the appropriateness and feasibility of development within, and the integrity of the Village's land, water and air. All provisions of this article apply to all structures, buildings and uses unless otherwise noted.

§ 360-73. High-risk erosion areas.

No building permit shall be issued for any use authorized by this chapter in a high-risk erosion area, as defined and classified by the Michigan Department of Environmental Quality (MDEQ), except upon the submittal of a permit issued by such Department for such use and the specific approved alterations to the lot and compliance with all provisions of this chapter. No zoning compliance certificate or building permit shall be issued prior to the receipt of written evidence of the Department's approval of such proposed alterations.

§ 360-74. Critical dune areas.

No building permit shall be issued for any use authorized by this chapter in a critical dune area, as defined and classified by the Michigan Department of Environmental Quality, except upon the submittal of a permit issued by such Department for such use and the specific approved alterations to the lot and compliance with all provisions of this chapter. No zoning compliance certificate or building permit shall

be issued prior to the receipt of written evidence of the Department's approval of such proposed alterations.

§ 360-75. Floodplain areas.

No building permit shall be issued for any use authorized by this chapter that would be contrary to Chapter **172**, Flood Hazard Areas, of the Code of the Village of Michiana, and any subsequent or additional local regulations addressing the same. No zoning compliance certificate or building permit shall be issued prior to the receipt of written evidence of the Department's approval of such proposed alterations.

§ 360-76. White Creek.

No structure or building shall be erected or expanded upon within 50 feet of the central thread of White Creek except upon the issuance of a permit by the Zoning Administrator. The Zoning Administrator shall not issue such a permit unless the Zoning Board of Appeals finds that such limitation results in a practical difficulty in the reasonable use of the lot, that no feasible alternatives exists, and that the proposed location and extent of alteration of the existing landscape is the least intrusive reasonable alternative.

§ 360-77. Removal of trees.

The cutting or removal of any tree shall comply with Chapter **323**, Trees, of the Code of the Village of Michiana, and any subsequent regulations addressing the same.

§ 360-78. Discharges and flammable and hazardous materials.

- A. Dust, fumes or noxious, odorous matter. No dust, fumes or noxious, odorous matter shall be discernible at or beyond the property line except in association with customary household activities, such as the use of a wood-burning fireplace.
- B. Atmospheric discharge. Any atmospheric discharge requiring a permit from the Michigan Department of Environmental Quality or federal government shall not be approved except upon the submittal of evidence of such permit, except where otherwise required by law.
- C. Contamination. It shall be unlawful to discharge any materials in such a way or of such nature or temperature as can contaminate any surface waters, land or aquifers, or otherwise cause the emission of dangerous or objectionable elements, except in accord with standards approved by the Michigan Department of Environmental Quality.
- D. Storage. The storage of fuels or other flammable liquids or toxic or hazardous substances is prohibited except where of a type and quantity associated with customary household activities, such as fertilizers and the use of fuel for vehicles and landscape maintenance tools. Such storage shall comply with local, county, state and federal regulations.
- E. Explosive materials. The storage of explosive materials shall comply with Chapter **159**, Explosives and Open Burning, of the Code of the Village of Michiana, and any subsequent or additional local regulations addressing the same.

§ 360-79. Grading and drainage.

The final grade surface of ground areas surrounding a building or structure shall be designed and landscaped such that surface waters flow away from the building or structure and are managed in a manner that avoids alterations to drainage patterns of adjacent properties, the erosion or filling of a roadside ditch, the creation of standing water over a sewage disposal drainage field, or causes hazardous or nuisance conditions along public streets. No grading or excavation shall be initiated until the Zoning Administrator has issued a zoning compliance certificate that shall signify the proposed activity conforms to the requirements of this chapter and, where required by state law, the Building Inspector certifies proposed structures and buildings associated with such grading or excavation comply with the Village's Construction Code through the issuance of a building permit. Impervious surface driveways, such as asphalt, concrete, gravel, brick and stone, in excess of five-percent slope shall incorporate design measures to be illustrated on the plot plan that demonstrate the manner in which driveway runoff will not cause ponding, flooding or erosion along the intersecting road. Such measures may include, but are not limited to, banked driveways or storm drains directing runoff to yard areas. See § 360-7. See § 360-104 for the definition of "impervious surfaces."

§ 360-80. Garbage.

All storage of garbage and waste disposal shall comply with requirements of the Michigan Department of Environmental Quality and Village regulations addressing the same.

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*

§ 360-81. Potable water and sewage disposal.

Any building intended for human occupancy and used for dwelling, recreational, institutional or other nonresidential purposes where so authorized by this chapter shall not be erected, altered, used or moved upon any premises unless said building shall be provided with a potable water supply and sewage disposal system that ensures a safe and effective means of collection, treatment and disposal of generated wastes. All on-site sewage disposal and potable water facilities shall be constructed and maintained in accordance with the requirements and standards of the Berrien County Health Department, as well as those of other applicable local, county, state or federal agencies.

§ 360-82. Compliance with local, county, state and federal regulations.

All land uses and construction activities shall conform with the provisions of this chapter and all county, state and federal regulations, including but not limited to the requirements of the Berrien County Health Department applicable to sewage disposal and potable water; the requirements of the Michigan Department of Environmental Quality applicable to air and water quality protection, wetlands, stream crossings, fills in or near water bodies or in floodplains, and waste disposal; and all local, county, state and federal regulations related to loading/unloading, transport, storage, use and/or disposal of hazardous substances.

§ 360-83. Pile heights of materials.

No excavated materials or outside fill materials may be stored on site in piles higher than eight feet from the lowest existing grade on which such pile shall sit, and such piles shall be covered overnight.

Article XI. Site Plan Review

§ 360-84. Purpose.

It is the purpose of this article to specify standards, application and data requirements, and the review process that shall be followed in the preparation of site plans as required by this chapter. These requirements are incorporated into the zoning compliance certification application process to ensure that the appropriate bodies are afforded an opportunity to review and evaluate proposed uses and development of sites with regard to such considerations as parking, vehicular and pedestrian circulation, drainage, landscaping and screening, signage, lighting, environmental and community character protection, and conformance with all applicable provisions and standards of this chapter. This article establishes a review process that requires the application materials to be subject to Planning Commission review and final action by the Village Council after receiving a recommendation from the Planning Commission.

§ 360-85. Site plan approval required.

- A. Uses requiring site plan approval. Site plan approval is required by the Village Council prior to the Zoning Administrator's issuance of a zoning compliance certificate for all authorized uses except single-family dwellings and accessory uses and structures thereto, including all special land uses. See § **360-9B** regarding plot plan review for single-family dwellings.
- B. Number of required site plans. Two site plans are required at the scale of one inch equals 20 feet. The first site plan shall show existing property corners, existing elevation contours for the entire lot clearly marked at one-inch intervals, and the location of any and all existing structures located from property corners and property lines. The second site plan shall show existing and proposed contours at one-foot contour intervals and any and all proposed structures located from property corners and property lines. All proposed structures and accessories shall be fully dimensioned. The proposed site plan shall clearly show the calculations of lot coverage as per Table 4-3^[1] and the area of the total lot in square footage.

[1] *Editor's Note: Table 4-3, Site Development Requirements for Principal Land Uses, is attached to this chapter.*

§ 360-86. Review procedures.

- A. Preliminary site plan required. Prior to preparing a detailed final site plan and seeking approval of such final site plan, the applicant shall seek approval of a preliminary site plan for the purpose of receiving approval of the general design and layout of the project. A preliminary site plan shall be reviewed and acted upon in the same manner as a final site plan, as delineated in Subsections **B** through **E** below, and including determination of application completeness and the Village Council taking final action on the preliminary site plan.
 - (1) The preliminary site plan shall be prepared according to the manner and information required for a final site plan pursuant to § **360-86B**, except that detailed construction drawings to address specific site improvements are not necessary. However, the detail of the submitted information shall adequately portray the feasibility of critical components of the project, such as, but not limited to, stormwater management, grading, vehicular circulation, lot areas and arrangements, signage and landscaping. Preliminary site plans shall be evaluated according to the level of information required at the preliminary site plan level. A preliminary site plan shall be approved if it contains the information required by and is in compliance with this chapter, the conditions imposed pursuant to this chapter, other Village planning documents, other applicable ordinances, and state and federal statutes.
 - (2) Approval of the preliminary site plan is valid for a period of one year. If a complete final site plan for the development, or any phase of the development, has not been submitted during this period, the approval of the preliminary site plans shall be null and void. This time limit may be extended by the Village Council upon its finding that no substantial changes have occurred to ordinance regulations, abutting properties, or other conditions that suggest revisions to the layout and/or design of the development. In the case of an expired preliminary

site plan that is not granted an extension of time, such plans shall not undergo review or action except upon a wholly new application according to § **360-86**.

B. Final site plan application submittal, distribution and data. Twenty copies of a final site plan application shall be submitted to the Village Clerk. The application shall consist of a form available from the Village Clerk and the final site plans. Upon receipt of the application materials, the Village Clerk shall record the date of their receipt and transmit copies to the Village Council and other agencies or individuals selected to review such plans, including but not necessarily limited to Village departments and staff, consultants and the Berrien County Drain Commissioner. The Village Clerk shall request all reviewing agencies to respond within 20 business days of receipt of the materials. The site plans shall be provided on a professional quality drawing of a scale not less than one inch equals 20 feet and shall clearly present the required information. All information depicted shall be designed by a professional engineer, land surveyor or landscape architect licensed in Michigan and shall bear the seal and signature of the licensed individual. The site plan shall present all necessary information in a clear and comprehensible fashion and be of such clarity and detail to permit the satisfactory construction of the project, if approved, to ensure the public health, safety and welfare. Final site plans shall include, at a minimum, the following, except where the Village Council determines, upon a request by the applicant, that the waiving of specific submittal items identified below, due to the particular character of proposed development or site or surrounding conditions, shall not undermine officials' ability to effectively evaluate the extent to which the site plan complies with the standards of this chapter and protect the public health, safety and welfare:

- (1) The site plan shall include the applicant's full name, address and phone number, and the name and address of the person and firm who prepared the plan, and the date on which each drawing contained within was prepared or last revised.
- (2) A vicinity plan showing the location of the site in relation to the surrounding road system for a minimum distance of 300 feet in all directions. The vicinity plan, or other component of the site plan materials, shall also identify the existing zoning classification and current use of all properties within 300 feet in every direction of the proposed use, including land uses on the opposite side of any road. The vicinity plan shall be at a scale of one inch equals 20 feet.
- (3) A property line survey, correlated with a legal description, showing property line dimensions and bearings, lot area, graphic scale, and a North arrow.
- (4) Existing uses, buildings, structures, roads and all other existing site improvements, with a designation as to which are to be retained, removed or otherwise altered.
- (5) Existing natural features on and within 300 feet of the site, including woodlands; wetlands; drainage courses, water bodies and one-hundred-year floodplain areas; state-regulated critical dune and high-risk erosion areas; topography at no greater than two-foot contour intervals; and soils by type and drainage features according to the Berrien County Soil Survey or well logs. The location of all trees of 10 inches or greater in diameter, measured at five feet above ground surface, shall be clearly identified by size and type.
- (6) Required front, side and rear yard setbacks for principal buildings in the district.
- (7) Proposed uses, buildings, structures and lots, including a project description that addresses the intended use of the property and each building proposed, the total number of dwelling units, total and usable floor area of each building, carports or garages, amount of recreational and open space, type of recreation facilities to be provided, and related information as pertinent or otherwise required by this chapter.
- (8) Proposed public rights-of-way, private easements, and deed restrictions.
- (9) Proposed roads, drives and alleys (including widths, cross-sections and profiles); acceleration, deceleration and turn lanes; driveways, parking spaces and parking aisles, with an indication of the total number of spaces and typical space and aisle/driveway dimensions, the direction of travel, and the inside radii of all curves including driveway curb returns; and

- sidewalks and other nonmotorized travel ways. Proposed traffic control measures (including signs) shall also be indicated.
- (10) Source and location of all public and private utilities, including potable water, sewage disposal, and electrical and communication lines, and the necessary easements that exist or are proposed to be established for installation, repair and maintenance of such utilities.
 - (11) Proposed accessory buildings and structures, including trash receptacles and enclosures, signs and lighting.
 - (12) A graphic illustration of the location and extent to which natural features on the site shall be disturbed or otherwise cleared, including those under Subsection **B(5)** above.
 - (13) A landscaping plan indicating the locations of plant materials to be preserved and locations of proposed planting and screening in compliance with the requirements of Article **IX**.
 - (14) A grading, storm drainage and stormwater management plan, including soil erosion and sedimentation control measures and spot elevations to adequately portray drainage patterns and final grades. Such plans shall include the location of drainage easements, exterior drains, dry wells, catch basins, retention and/or detention areas, sumps and other facilities designed to collect, store or transport stormwater, The point of discharge for all drains and pipes shall be specified on the site plan as well as invert and related elevations, and pipe lengths and slope, to construct the same. Such plans shall document the extent of clearing of vegetation and the extent of other clearing, cuts, fills or other grading, and the finished floor elevations of all buildings.
 - (15) The location and specifications for any existing or proposed above- or below-ground storage facilities for any toxic or hazardous substances, as well as any containment structures or clear zones required by government authorities; a complete inventory of toxic or hazardous substances to be stored or used on the site, including the quantity of substances, substance names and characteristics; the proximity of such materials to groundwater aquifers, wetlands, surface waters, existing and proposed wells, storm sewers, storm drains, and sanitary sewers; and a proposed storage and disposal plan for such materials, including their transfer and/or transport.
 - (16) Elevation drawings of all buildings.
 - (17) A statement from the applicant identifying all other federal, state and local permits required, if any.
 - (18) Project completion schedule.
 - (19) Such other information as is necessary to enable the Village Council to determine whether the proposed site plans shall conform to the provisions of this chapter.
- C. Review for completeness. Upon receipt of the application materials, the Planning Commission shall review the materials and determine their completeness. If determined to be insufficient in adequately portraying the required information, the Planning Commission shall delay further consideration of the application until such time that the application materials have been made satisfactory, and shall notify the applicant in writing of the deficiencies.
- D. Planning Commission recommendation on final site plan. Upon receipt of a complete application, the Planning Commission shall review the final site plan application materials and determine their conformity with the applicable provisions of this chapter, including the standards of § **360-87**. After conducting a review, the Planning Commission shall deny, approve or conditionally approve the final site plan as it pertains to requirements and standards contained in this chapter, including the standards of § **360-87**.^[1]
- [1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*
- E. Village Council action on final site plans. The Village Council shall review the final site plan application materials and determine their conformity with the applicable provisions of this chapter,

including the standards of § 360-87. After conducting a review, the Village Council shall deny, approve or conditionally approve the final site plan as it pertains to requirements and standards contained in this chapter, including the standards of § 360-87. Site plans shall be approved if they contain the information required by and are in compliance with this chapter, the conditions imposed pursuant to the chapter, other Village planning documents, other applicable ordinances, and state and federal statutes. Any conditions required by the Village Council for approval shall be stated in writing, together with the reasons, and delivered to the applicant (see § 360-25, regarding conditional approvals). The Village Council may require the submittal of a fully revised final site plan upon its determination that the conditions necessary for the approval of such plan are of such an extent or character that a fully revised plan is necessary before an approval action can be granted.

- (1) Issuance of compliance certificate. Upon approval or conditional approval of the site plans by the Village Council, and upon all other approvals as may be required by this chapter, such as in the case of a special land use, the Zoning Administrator shall issue a compliance certificate authorizing the use and construction subject to the approved application.
 - (2) Building permit required. Upon issuance of a compliance certificate, no construction shall be initiated prior to the acquisition of all necessary building permits from the Building Inspector.
- F. Approved site plans. Five copies of the approved site plans, with any conditions contained within, shall be maintained as part of the Village records for future review and enforcement. One copy of the site plan shall be returned to the applicant. Each copy shall be signed and dated with the date of approval by the Village Council President and Zoning Administrator for identification of the approved plans. If any variances from the Zoning Ordinance have been obtained from the Zoning Board of Appeals, the minutes concerning the variances, duly signed, shall also be filed with the Village records as a part of the site plan.
- G. As-built drawings. The applicant shall submit three copies of as-built drawings upon completion of construction activities, but no later than 60 days from the issuance of a certificate of occupancy by the Building Inspector. Such drawings shall identify all improvements made upon the site, including utility services.

§ 360-87. Site plan approval standards.

- A. Specific site development standards. Each preliminary and final site plan shall conform with the specific site development standards of this chapter, including, but not limited to, requirements pertaining to lot area, lot width, setbacks, heights, permitted uses, nonconformities, signage, off-street parking and loading, landscaping and screening, lighting, potable water and sewage disposal, and standards specific to special land uses.
- B. General site plan approval standards. In addition to compliance with the standards of Subsection A above, all site plans shall comply with the following general site plan approval standards:
- (1) All elements of the site plan shall be harmoniously and efficiently organized in relation to the size and type of lot, the character of adjoining property and the type and size of buildings.
 - (2) The site shall be so developed as not to impede the normal and orderly development, improvement or enjoyment of surrounding property for uses permitted in this chapter, including matters pertaining to visual impacts from lighting, signage, outdoor storage, and off-street parking.
 - (3) The environmental character of the site shall be preserved in its natural state, insofar as practical, by minimizing the removal or disturbances to on-site natural features such as trees, woodlands, soils, topography, watercourses and wetlands.
 - (4) The removal of stormwater shall ensure the public health, safety and welfare of the users of the site and shall not adversely affect adjoining properties, the capacity of public or natural drainageways, nor increase the rate of discharge to such drainageways; shall rely on existing

drainage patterns where feasible and minimize topographic alterations; and shall incorporate the necessary measures to discourage soil erosion and sedimentation and the discharge of impurities into the groundwater and nearby watercourses.

- (5) All buildings shall be so arranged as to permit emergency access by some practical means to all sides.
- (6) Provisions for vehicular and pedestrian circulation and parking shall ensure safe and efficient travel and minimize negative impacts upon abutting properties and the existing and planned road system and traffic patterns in the general area, including congestion at access and egress points.
- (7) The site plan shall provide for the appropriate location of all necessary and proposed utilities. Underground facilities shall be provided to the greatest extent feasible.
- (8) Site plans shall conform to all applicable Village planning documents, including the goals and objectives of the Village of Michiana Master Plan, other applicable ordinances, and state and federal statutes.

§ 360-88. Conformity to approved site plans.

Property which is the subject of site plan approval shall be developed in compliance with the approved site plan and any approved changes thereto. If construction or use of the property does not conform to such approved plans, the approved compliance certificate may be subject to revocation by the Zoning Administrator pursuant to § **360-9C**.

§ 360-89. Changes to approved site plans.

Site plan changes. No changes shall be made to approved site plans prior to, during, or after construction, except according to the following procedures:

- A. Major changes. Major changes to approved site plans shall include changes in excess of five feet in the location of vehicular circulation ways and parking areas or exterior building walls; the number or location of accesses to public streets and alleys; a reduction in the number of parking spaces or an increase of more than four parking spaces; an increase in the gross floor area or heights of buildings or number of dwelling units; a reduction in open space; and similar changes. Major changes shall be reviewed and acted upon according to § **360-86**.
- B. Minor changes. Minor changes to approved site plans shall include changes not otherwise included as a major change in Subsection **A** above and shall be subject to Zoning Administrator approval. Approved changes shall be clearly specified in writing and signed by the Zoning Administrator. The Zoning Administrator shall keep accurate records of approved changes. The Zoning Administrator may defer action on a minor change to the Village Council.

§ 360-90. Appeals.

A person aggrieved by a decision on a site plan may appeal such decision to the Zoning Board of Appeals pursuant to Article **VII**.

§ 360-91. Preexisting site plans under review.

All development subject to site plan approval shall comply with the regulations and standards of this chapter except in the case where a development plan has received preliminary site plan approval by the site plan approving body prior to the effective date of this chapter or amendment thereto; in which

case the final site plans shall be reviewed using the procedures and substantive standards under the ordinance in effect at the time of the preliminary plans approval, provided the final site plans are filed with the Zoning Administrator within one year of the effective date of this chapter or amendment thereto and contain all information required and are accompanied by all required fees.

Article XII. Special Land Uses

§ 360-92. Purpose.

It is the purpose of this article to provide a set of procedures and standards for specific uses of land or structures that will allow, on one hand, practical latitude for the landowner, investor or developer, but that will, at the same time, promote the purpose of this chapter and ensure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land uses. In order to provide control and reasonable flexibility, this article permits detailed review of certain specified types of land use activities, referred to as "special land uses," which, because of their particular and unique characteristics, require special consideration in relation to the welfare of adjacent properties and to the community as a whole. Land uses and structures possessing these characteristics may be authorized within certain zoning districts as specified in Article **IV**, Zoning Districts; District Regulations; Zoning Map, by the issuance of a compliance certificate for a special land use. This article establishes a review process that requires the application material to final action by the Village Council.

§ 360-93. Review procedure.

The review procedures for an application for a special land use shall be identical to the review and approval procedures for site plans according to Article **XI**, including the information to be submitted, the determination of application completeness, the Village Council taking final action on the preliminary site plan/special land use application, the time period for which a preliminary application approval is valid prior to a final application submittal, except as otherwise provided or clarified below:

- A. An application for a zoning compliance certificate for a special land use shall require Village Council action on a preliminary application and final application.
- B. An application for a compliance certificate for a special land use shall consist of the following:
 - (1) An application form available from the Zoning Administrator.
 - (2) A site plan prepared according to § **360-86B** or, in the case of a preliminary site plan, according to § **360-86A**.
 - (3) A detailed description of the proposed project, in narrative form.
- C. Upon finding that the application materials are complete, the Village Council shall hold a public hearing on such application. Notice of the hearing shall comply with § **360-16**. A recommendation on a special land use shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed.
- D. The Village Council shall deny, approve or approve with conditions the application for special land use/site plan approval. The decision on the application shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed. In arriving at its decision, the Village Council shall refer to the approval standards set forth in § **360-97** in addition to those specified for site plan approval (§ **360-87**).

§ 360-94. Appeals.

A person aggrieved in association with a special land use decision may appeal the special land use application decision to the Circuit Court only.

§ 360-95. Reapplication.

No application for a compliance certificate for a special land use which has been denied wholly or in part by the Village Council shall be resubmitted until the expiration of one year from the date of such denial, except on the grounds of newly discovered evidence or proof of changed conditions having bearing on the basis for the original action, as determined by the Village Council. A reapplication shall require a new fee, and the process will follow all provisions of § **360-93**.

§ 360-96. Changes.

- A. Site plan. Changes to the approved site plan shall comply with the application and review procedures of § **360-89**. In the case where a proposed site plan change constitutes a major change according to § **360-89**, the Village Council shall hold a public hearing on such site plan change according to the notice requirements of § **360-93C**. If the Village Council determines that such major change would alter the essential character of the site plan, the proposed change shall not occur until such change is applied for and approved according to the application and review procedures of § **360-93**.
- B. Use or activity. A change in the character of the use or activity from what the originally approved compliance certificate for special land use authorized shall not occur until such change is applied for and approved according to the application and review procedures of § **360-93**. Examples requiring a new application and review procedure include the addition of land to the legal description of the original compliance certificate for the special land use; the establishment of another special land use; an expansion or increase in intensity of use, including but not necessarily limited to additional floor area and building additions.

§ 360-97. Approval standards.

- A. General standards. No special land use application shall be approved except where the proposed use and development complies with the following standards:
 - (1) Be harmonious with and in accordance with the Master Plan of the Village.
 - (2) Be harmonious with and in accordance with the general objectives, intent and purposes of this chapter.
 - (3) Be of such character to be compatible with adjacent conforming uses of land.
 - (4) Be designed, constructed, operated and maintained so as to be appropriate in appearance and harmonious with the existing or intended character of the general vicinity. In determining whether this requirement has been met, consideration shall be given to:
 - (a) The bulk, placement and materials of construction of proposed structures.
 - (b) Pedestrian and vehicular circulation.
 - (c) The location of vehicular use and parking areas.
 - (d) The requirements for on-street parking.
 - (5) Not be hazardous or disturbing to existing or future uses in the same general vicinity.
 - (6) Be served adequately by essential public facilities and services such as roads, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, and schools; and

minimize the impact of traffic generated by the proposed development on adjacent properties.

- (7) Not involve uses, activities, processes, materials and equipment or conditions of operation that will be detrimental to any person, property or general welfare by reason of excessive production of traffic, noise, glare and odors.
- (8) Not involve uses, activities, processes, materials and equipment or conditions of operation that will be detrimental to the natural environment, including air, soil, surface water and groundwater resources.
- (9) Not create excessive additional requirements at public cost for public facilities and services.
- (10) Comply with the site plan approval standards of § **360-87**.

B. Specific standards. In addition to compliance with the above standards in Subsection **A**, special land uses shall comply with the standards and regulations applicable to each specific special use as identified in Article **IV**.

Article XIII. Amendments

§ 360-98. Purpose.

The purpose of this chapter is for establishing and maintaining sound, stable and desirable land use and development within the territorial limits of the Village. It is not intended that this chapter be amended except to correct an error in the Zoning Ordinance, to address changed or changing conditions in a particular area in the Village, to conform with changes to the Master Plan and/or other ordinances of the Village, to meet public need for new or additional land uses in areas so contemplated by the Master Plan, or to further protect the environment, neighborhoods, public infrastructure or other public investment in the Village. This article establishes procedures for review and action on amendment requests. Requested amendments to the Zoning Ordinance shall be processed according to the provisions of Public Act 110 of 2006,^[1] as amended, and in doing so, the procedures of this article shall be followed.

[1] *Editor's Note: See the Zoning Enabling Act, MCLA § 125.3601 et seq.*

§ 360-99. Initiation of amendments.

Petitions for amendments may be initiated by the Village Council on its own motion or by petition of one or more owners of property to be affected by the proposed amendment. Only the Village Council may amend this chapter.

§ 360-100. Procedures.

- A. Application, distribution and data. A petitioner shall submit 15 copies of a completed application for ordinance amendment to the Village Clerk on a form established for that purpose, which shall include a detailed description of the proposed amendment, including the name, address and phone number of the applicant and the desired change(s) and reason(s) for such change(s). The Village Clerk shall record the date of their receipt and transmit copies to the Village Council and other agencies or individuals selected to review such plans, including but not necessarily limited to Village departments and staff, consultants and the Berrien County Drain Commissioner. See § **360-13** regarding application fees.
 - (1) When the petition involves a change in the Zoning Map, an application shall be submitted for each parcel of land which is not contiguous to any adjacent parcel of land being proposed for the same amendment, and the applicant shall also submit the following information:

- (a) A legal description of the property.
 - (b) A scaled map of the property, correlated with the legal description, and clearly showing the property's location.
 - (c) The applicant's name, address and phone number and interest in the property, and if the applicant is not the owner, the name, address and phone number of the owner.
 - (d) The desired change and reasons for such change.
 - (e) Signature(s) of petitioner(s) and owner(s) certifying the accuracy of the required information.
- B. Village Council action.
- (1) Public hearing. The Village Council shall review the application materials. Upon finding that the application materials are satisfactorily complete and the Village Council has a clear understanding of the requested amendment, the Village Council shall establish a date for at least one public hearing on the application and hold such hearing. The Village Clerk shall give notice of the public hearing according to § 360-16. Any application not properly filed or complete shall be returned to the applicant with a written notice of deficiencies.
 - (2) Village Council review and recommendation. In reviewing any application for an amendment to this chapter, the Village Council shall identify and evaluate all factors relevant to the application. Findings of fact shall be gathered and shall be made a part of the public records of the meetings of the Village Council.
 - (a) If the petition involves an amendment to the Official Zoning Map, matters to be considered by the Village Council shall include, but shall not be limited to, the following:
 - [1] What, if any, identifiable conditions related to the application have changed which justify the proposed amendment?
 - [2] What is the impact of the amendment on the ability of the Village and other governmental agencies to provide adequate public services and facilities and/or programs that might reasonably be required in the future if the proposed amendment is adopted?
 - [3] Will the petitioned district change adversely affect the value of the surrounding property?
 - [4] Are the site's physical, geological, hydrological and other environmental features compatible with the host of uses permitted in the proposed district, and will development under the petitioned district change be likely to adversely affect environmental conditions?
 - [5] Is the subject property able to be put to a reasonable economic use in the zoning district in which it is presently located?
 - [6] Is the proposed rezoning consistent with the zoning classification of surrounding land?
 - [7] Can the subject parcel comply with all requirements of the proposed zoning classification?
 - [8] Does the petitioned district change generally comply with the Village of Michiana Master Plan?
 - [9] What are the precedents and the possible effects of such precedent which might result from the approval or denial of the petition?

- (b) If the petition involves an amendment to the text of the chapter, matters to be considered by the Village Council shall include, but shall not be limited to, the following:
- [1] Is the proposed amendment supported by documentation, such as from the Zoning Board of Appeals, that the proposed amendment would minimize problems or conflicts with specific sections of the chapter?
 - [2] Is the proposed amendment supported by reference materials, planning and zoning publications, information gained at seminars or experiences of other communities to more effectively deal with certain zoning issues?
 - [3] Is the proposed amendment supported by significant case law?
- (c) In determining the above-mentioned findings of fact, the Planning Commission may solicit information and testimony from officials of, but not limited to, the County Health Department, County Drain Commissioner, Village Police Department, and any school district affected.
- C. Village Council action. After determining the findings, the Village Council, at any regular meeting or at any special meeting called for that purpose, shall consider said findings and vote upon the adoption of the proposed amendment, with or without revisions. Such action shall be by ordinance, requiring a majority vote of the Village Council. The Village Council may hold additional public hearings if it considers it necessary. The Village Council shall grant a hearing on a proposed ordinance provision to a property owner who requests a hearing by certified mail, addressed to the Village Clerk. Hearings under this Subsection **C** shall conform to the notice requirements of § **360-16**.
- (1) Protest petition. Upon presentation of a protest petition meeting the requirements of this Subsection **C(1)**, a Zoning Map amendment which is the object of the petition shall be approved only by a 2/3 vote of the Village Council, unless a larger vote, but not to exceed a 3/4 vote, is required by the Village Charter. The protest petition shall be presented to the legislative body before final legislative action on the amendment by the Village Council, and shall be signed by one of the following:
 - (a) The owners of at least 20% of the area of land included in the proposed change.
 - (b) The owners of at least 20% of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change. For purposes of this provision, publicly owned land shall be excluded in calculating the twenty-percent land area requirement.
- D. Publication of notice of ordinance amendments. Following adoption of amendments to this chapter by the Village Council, the amendments shall be filed with the Village Clerk, and one notice of adoption shall be published in a newspaper of general circulation in the Village within 15 days after adoption. Promptly following adoption of an amendment by the Village Council, a copy of the notice of adoption shall also be mailed to the airport manager of each airport that registers its name and mailing address with the Village Clerk for the purpose of receiving the notice. The notices shall include the following information:
- (1) Either a summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment.
 - (2) The effective date of the amended ordinance.
 - (3) The place and time where a copy of the ordinance may be purchased or inspected.

§ 360-101. Resubmittal.

No application for an amendment which has been denied by the Village Council shall be resubmitted for a period of one year from the date of the last denial, except on grounds of newly discovered evidence or proof of changed conditions.

§ 360-102. Comprehensive review.

The Village Council shall, from time to time, examine the provisions of this chapter and the location of zoning district boundary lines and shall make changes and amendments, if any, which are deemed to be desirable in the interest of public health, safety and general welfare.

Article XIV. Definitions

§ 360-103. Construction of language.

For the purpose of this chapter, certain rules of construction apply to the text as follows:

- A. Words used in the present tense include the future tense; and the singular includes the plural, unless the context clearly indicates the contrary.
- B. The word "person" includes a corporation, association, partnership, trust, firm or similar activity as well as an individual.
- C. The word "building" includes the word "structure," and both include any part thereof.
- D. The word "lot" includes the word "plot," "tract," or "parcel."
- E. The term "shall" is always mandatory and not discretionary; the word "may" is permissive.
- F. The word "used" or "occupied," as applied to any land or building, shall be construed to include the words "intended to be used or occupied," "arranged to be used or occupied," "maintained to be used or occupied," or "designed to be used or occupied."
- G. The words "this chapter" mean the text of this chapter as well as all maps, tables, graphics and schedules, as included or attached, as enacted or subsequently amended.
- H. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions or events connected by the conjunction "and," "or," "either . . . or," the conjunction shall be interpreted as follows:
 - (1) "And" indicates that all the connected items, conditions, provisions or events shall apply.
 - (2) "Or" indicates the connected items, conditions, provisions or events shall apply singly or in any combination.
 - (3) "Either/or" indicates that the connected items, conditions, provisions or events shall apply singly, but not in combination.
- I. The "Village" is the Village of Michiana in the County of Berrien, State of Michigan; the "Village Council" and "Zoning Board of Appeals" are, respectively, the Village Council and the Zoning Board of Appeals, of the Village of Michiana.
- J. Any word or term not interpreted or defined by this chapter shall be used with a meaning of common or standard utilization. A dictionary may be consulted.
- K. Where a specific agency, department, law or rule is referred to in this chapter, such reference shall include any successor agency, department, law or rule.

§ 360-104. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY BUILDING OR STRUCTURE

A building or structure customarily incidental and subordinate to the principal structure and located on the same lot as the principal building.

ACCESSORY USE

A use customarily incidental and subordinate to the principal use of the land or building and located on the same lot as the principal use.

ALTERATION

Any change, addition or modification in construction or type of occupancy; any change in the structural members of a building, such as walls or partitions, columns, beams or girders; or any change which may be referred to herein as altered or reconstructed.

BUILDING

Any structure, either temporary or permanent, having a roof supported by columns, walls or any other supports, which is used for the purpose of housing, sheltering, storing or enclosing persons, animals or personal property, or carrying on business activities. This definition includes but is not limited to mobile homes, tents, sheds, garages and greenhouses.

BUILDING COVERAGE

The portion of a lot or yard, stated in terms of a percentage, which is covered by all principal and accessory buildings. In the case where there is a roof projecting beyond a wall or foundation, coverage shall be measured from the wall below, except where such projection exceeds two feet, in which case coverage shall be measured from the roofline.

BUILDING HEIGHT

The vertical distance measured from the existing grade to the highest point of the roof's surface (the peak). Where a building is located on sloping terrain, height will be measured for each building wall characterized by sloping terrain, from the average ground level of the existing grade at the building wall to the highest point of the roof's surface (the peak). Where any roof surface does not extend to a wall along the exterior foundation of the building, the building height at such roof's peak surface shall be measured from the existing grade at the nearest wall along the exterior foundation of the building. In the case of a pillar foundation, the building height shall be measured as if traditional foundation construction is utilized. For the purposes of this definition, "existing grade" shall be interpreted to mean the existing grade along the proposed building foundation prior to any construction, grading, clearing or earthmoving activities.

BUILDING INSPECTOR

An individual or agency hired by the Village to administer the Village's Construction Code pursuant to Public Act 230 of 1972, as amended.

CEMETERY

Property, including crematories, mausoleums and/or columbariums, used or intended to be used solely for the perpetual interment of deceased human beings or customary household pets.

CERTIFICATE OF OCCUPANCY

A document signed by the Building Inspector as a condition precedent to the commencement of a use, which acknowledges that such use, structure or building complies with the provisions of this chapter and the Village's Construction Code.^[1]

COMMUNICATION TOWER

A relay structure, including both antenna and structural supports, attached directly to the ground or to another structure, used for the transmission or reception of radio, television, telephone, microwave or any other form of telecommunications signals. Not included within this definition are: citizen band radio facilities; radio and television citizen band radio facilities; short-wave-receiving facilities; federally licensed amateur (ham) radio facilities; satellite dishes; and governmental

facilities which are subject to state or federal law or regulations which preempt municipal regulatory authority.

CONSERVATION AREA

Land set aside principally for the protection and appreciation of natural resources such as wildlife, woodlands, wetlands and sand dunes, and which are sometimes more commonly referred to as "nature preserves" or "nature areas."

A. CLASS ONE

A conservation area that includes no buildings, structures, off-street parking, or any other similar alterations or improvements to the site, excluding trails and occasional benches.

B. CLASS TWO

A conservation area that includes buildings; structures, excluding occasional benches; off-street parking; or other alterations or improvements, or which is not otherwise included in the definition for a Class One conservation area.

DAY CARE, FAMILY HOME

A dwelling in which a permanent resident of the dwelling, in addition to no more than one additional care provider, provides for the care of fewer than seven minor children unrelated to the resident of the dwelling for periods of fewer than 24 hours a day, for more than 20 days in a calendar year, unattended by the children's parents or legal guardians, and licensed or registered by the state.

DISTRICT

An area of land for which there are regulations governing the use of buildings and premises, such as yard requirements, lot sizes, and height regulations. A "district" is also known as a "zone" or "zoning district."

DRIVEWAY

A means of access for vehicles from a road across a lot to a parking or loading area, garage, dwelling or other structure or area on the same lot.

DWELLING

Any building, or portion thereof, which is designed or used exclusively for residential purposes. In no case shall a motor home, trailer coach, vehicle or any portion thereof, tent or portable building be considered a dwelling.

DWELLING, SINGLE-FAMILY

An independent detached building designed as a single dwelling unit and used exclusively for occupancy by one family. A single-family dwelling may include an attached garage.

DWELLING UNIT

One or more rooms with bathroom and kitchen facilities designed as a self-contained unit for occupancy by one family for living, cooking and sleeping purposes.

ERECTED

Built, constructed, reconstructed, moved upon, or any physical activity upon a premises or lot required for the building. Excavations, fill, drainage and the like shall be considered a part of erection when done in conjunction with a structure.

EXCAVATION

Any breaking of ground, except common household gardening and ground care, including fencing.

FAMILY

A single individual doing his/her own cooking and living upon the premises as a separate housekeeping unit, or a collective body of persons doing their own cooking and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon birth,

marriage or other long-term domestic bond as distinguished from a society, club, fraternity, sorority, association, lodge, coterie, organization or group of students or other individuals whose domestic relationship is of a transitory or seasonal nature or for an anticipated limited duration of a school term or terms or other similar determinable period. Said definition shall not apply in instances of group care centers, or state licensed residential facilities as established under Act 287 of 1972, as amended, or by Act 116 of 1973, as amended.^[2]

FILLING

The depositing or dumping of any matter into or onto the ground.

FRONTAGE

The total continuous length of the line separating said lot from the road right-of-way, and typically identical to the front lot line.

GARAGE

An accessory building or an accessory portion of a principal building designed or used primarily for the storage of noncommercial motor vehicles, boats, motor homes, snowmobiles and similar vehicles owned and used by the occupants of the building to which it is accessory.

HOME OCCUPATION

An occupation or profession conducted entirely within a dwelling, including an attached garage. See § 360-39.

IMPERVIOUS SURFACE

A surface that has runoff coefficient of greater than 0.50, as defined in the American Society of Civil Engineers Manual No. 77 (Design and Construction of Urban Stormwater Management Systems), or its replacement, or in a State of Michigan source responsible for runoff calculations.

LOADING SPACE

An off-street space on the same lot with a building or group of buildings for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials.

LOT

A tract of land which is occupied or intended to be occupied by a principal building or buildings or utilized for the principal use and uses accessory thereto. A lot may consist of a single lot of record, a portion of a lot of record, or any combination of complete and/or portions of lots of record. (See Figure 18-1, Lot Types, attached to this chapter.)

LOT AREA

The area of the horizontal plane within the lot lines of a lot, exclusive of the area of any road right-of-way adjoining any portion of the lot.

LOT, CORNER

Any lot having at least two contiguous sides adjoining upon one or more roads, provided that the interior angle at the intersection of such two sides is less than 135°. A lot adjoining a curved street(s) shall be a corner lot if the arc has a radius less than 150 feet. (See Figure 18-1, Lot Types, attached to this chapter.)

LOT DEPTH

The distance from the front lot line of the lot to its opposite rear line, measured midway between the side lot lines (see Figure 18-2, Lot Lines and Yards, attached to this chapter).

LOT, FLAG

A lot whose access to a road is by a narrow, private easement that is either a part of the lot or an easement across another property, and does not meet the frontage requirements of the district in which it is located (see Figures 18-1 and 18-2 attached to this chapter).

LOT, INTERIOR

A lot not otherwise described as a corner, through or flag lot.

LOT LINES

The lines bounding a lot (see Figure 18-2 attached to this chapter).

A. LOT LINE, FRONT (see Figure 18-2 attached to this chapter)

- (1) In the case of a lot not constituting a corner or flag lot, the line separating said lot from the road right-of-way.
- (2) In the case of a corner lot or through lot, the front lot line shall be that line that separates said lot from the right-of-way for the road which is designated as the front on the plat or on the plot plan or site plan review application, subject to approval.
- (3) In the case of a flag lot, the front lot line shall be the lot line most parallel to and nearest the road from which access is obtained.

B. LOT LINE, REAR

The lot line opposite and most distant from the front lot line. In the case of a triangular or otherwise irregularly shaped lot, an imaginary line at least 10 feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

C. LOT LINE, SIDE

Any lot line other than a front or rear lot line.

LOT OF RECORD

A lot which is part of a platted subdivision and is shown on a map thereof, which has been recorded in the office of the Berrien County Register of Deeds as of August 27, 1992, and provided said lot was lawfully created in accordance with applicable statutes and ordinances.

LOT, THROUGH

A lot having frontage on two roads other than a corner lot (see Figure 18-1 attached to this chapter).

LOT WIDTH

The straight line horizontal distance between the side lot lines, measured at the two points where the minimum required front setback line intersects the side lot lines (see Figure 18-2 attached to this chapter).

LOT/YARD COVERAGE

The portion of a lot or yard, stated as a percentage, which is covered by principal and accessory buildings and structures, swimming pools, impervious surfaces, such as but not limited to wood or other decking, stone, brick, asphalt, concrete, gravel, landscape pavers, and hard-surface patios and outdoor areas, irrespective of the width of the gap between bricks and stones, and similar component surfaces of such areas, and any modification of ground surface areas that generally impeded the normal growth of grasses, shrubs and trees and roof overhanging, except that this thirty-percent standard shall not apply to handicap access ramps. Maximum lot coverage applies to, but is not limited to, principal and accessory structures and buildings.

MASTER PLAN

The statement of policy by the Village relative to the agreed upon and officially adopted guidelines for a desirable physical pattern for future community development, land use and preservation. The plan, developed pursuant to Public Act 33 of 2008, as amended (MCLA § 125.3801 et seq.), the Municipal Planning Act, consists of maps, charts and written material representing in summary form the soundest concept for addressing community growth.^[3]

MOBILE HOME

A structure, transportable in one or more sections, which is built on a chassis and designed to be used as a dwelling, with or without permanent foundation, when connected to the required utilities,

and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. The term "mobile home" shall not include pickup campers, travel trailers, motor homes, dwellings consisting of prefabricated units transported to a site on a removable undercarriage or flatbed and assembled for permanent location on a lot (modular homes), recreational vehicles, converted buses, tent trailers, or other transportable structures designed for temporary use.

MODULAR (PREMANUFACTURED) HOME

A dwelling unit constructed solely within a factory, as a single unit or in various sized modules or components, which are then transported by truck or other means to a site where they are assembled on a permanent foundation to form a single-family dwelling unit, and meeting all codes and regulations applicable to conventional single-family home construction.

MOTOR HOME

A self-propelled, licensed vehicle prefabricated on its own chassis, intended for recreational activities and temporary occupancy.

NONCONFORMING BUILDING OR STRUCTURE

A building or structure (or portion thereof) lawfully existing at the time of adoption of this chapter or a subsequent amendment thereto, that does not conform to the provisions of this chapter relative to height, bulk, area, placement, lot or building coverage, or yards for the district in which it is located. For the purposes of this definition, "structure" shall include decks, patios and other surfaces contributing to lot coverage as defined in this chapter.

NONCONFORMING LOT (SUBSTANDARD LOT)

A lot lawfully existing at the effective date of this chapter or affecting amendment and which fails to meet the area, frontage and/or dimensional requirements of the district in which it is located.

NONCONFORMING USE

A use of a building or structure or of land, lawfully existing at the time of adoption of this chapter or subsequent amendment thereto, that does not conform to the regulations of the district in which it is situated.

NONGLARE

Not causing momentary or long-term loss of vision due to reflective light.

NUISANCE

Any offensive, annoying, unpleasant or obnoxious thing or practice or a cause or source of annoyance which prevents the free use of one's property or which renders its ordinary use or physical occupation uncomfortable. Nuisance commonly involves continuous or recurrent acts which give offense to the senses, violate the laws of decency, obstruct reasonable and comfortable use of property, or endanger life and health.

OFF-STREET PARKING

Either parking on private property or parking within the right-of-way of a street, but outside of the moving traffic lanes.

ON-STREET PARKING

Parking within the moving traffic lanes.

OWNER

The owner of the premises or lesser estate in the premises, a mortgagee or vendee in possession, an assignee of rents, receiver, executor, trustee, lessee, or any other person, sole proprietorship, partnership, association or corporation directly or indirectly in control of a building, structure or real property, or his or her duly authorized agent.

PARCEL

See definition for "lot."

PARKING SPACE

An area of definite length and width as designated in this chapter for parking an automobile or other vehicle, and which is fully accessible for such purposes.

PERSON AGGRIEVED

A person aggrieved shall be any person, firm, partnership, corporation or association with an interest in real property which will suffer special damages as a result of the decision in question. "Special damages" shall be defined as a particular injury to a landowner's beneficial use or enjoyment of his own land, which injury is not shared in common with other members of the general public.

PLAT

A map of a subdivision of land recorded with the Register of Deeds pursuant to the Land Division Act, P.A. 591 of 1996, as amended, or a prior statute.

PLOT PLAN

A plan showing basic features of a proposed development, so that it may be evaluated in order to determine whether it meets the provisions of this chapter. A plot plan depicts less detailed information compared to a site plan. Plot plans shall be to a scale of one inch equals 20 feet.

PRINCIPAL BUILDING

The main building on a lot in which the principal use exists.

PRINCIPAL USE

The main use to which the premises is devoted and the main purpose for which the premises exists.

PROHIBITED USE

A use of land which is not permitted within a particular zoning district.

PUBLIC FACILITY

Land and associated structures and buildings used to carry out a governmental function(s) or provide a governmental service(s), such as a use or service owned or managed by a city, village, township, county, state or public school board, and including commissions or other arms of such entities. Examples of such facilities include, but are not necessarily limited to, municipal parks and cemeteries, police and fire protection facilities, courts of justice, and government offices.

PUBLIC UTILITY

Any person, firm or corporation, municipal department, board or commission duly authorized to furnish and furnishing under federal, state or municipal regulations to the public any of the following: gas, steam, electricity, sewage disposal, communication, telephone, telegraph, transportation or water.

RECREATIONAL VEHICLE

A vehicle primarily designed and used as temporary living quarters for recreational, camping or travel purposes, including a vehicle having its own motor power or a vehicle mounted on or drawn by another vehicle, including what are commonly referred to as travel trailers, camping trailers, motor homes, and truck campers. Recreational vehicles do not include mobile homes.

RIGHT-OF-WAY

The legally established boundaries of a public thoroughfare established for passage of persons, vehicles or the location of utilities. The delineated boundaries are referred to as right-of-way lines.

ROAD

Any public thoroughfare dedicated and maintained for the use and operation of vehicular traffic by the Village of Michiana. May also be referred to as "street."

SETBACK

The distance between the road right-of-way line or the side or rear lot line and the nearest supporting member of a structure on the lot.

SITE PLAN

A plan showing all physical features of a proposed development, so that it may be evaluated in order to determine whether it meets the provisions of this chapter. Site plans shall be to a scale of one inch equals 20 feet.

SPECIAL LAND USE

Uses and structures which have been generally accepted as reasonably compatible with the primary uses and structures within a zoning district but could present potential injurious effects upon the primary uses and structures within the zoning district and, therefore, require special consideration in relation to the welfare of adjacent properties and to the community as a whole. All such proposed uses shall be subject to a public hearing. Refer to Article **XII**, Special Land Uses.

STOP-WORK ORDER

An administrative order which is either posted on the property or mailed to the property owner which directs a person not to continue or not to allow the continuation of an activity which is in violation of this chapter.

STATE-LICENSED RESIDENTIAL FACILITY

A structure constructed for residential purposes that is licensed by the state under the Adult Foster Care Licensing Act, 1979 P.A. 218, MCLA §§ 400.701 to 400.737, or 1973 P.A. 116, MCLA §§ 722.111 to 722.128, and provides residential services for six or fewer individuals under twenty-four-hour supervision or care.^[4]

STREET

See "road."

STRUCTURE

Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having such location on the ground, including but not limited to all buildings, independently supported decks, satellite dishes and freestanding signs; excepting anything lawfully in a public right-of-way, including but not limited to utility poles, sewage pumping stations, utility manholes, fire hydrants, electric transformers, telephone boxes, and related public facilities and utilities defined as essential public services. Fences shall not be considered as structures but shall comply with all applicable standards of this chapter.

SWIMMING POOL

An above- or below-grade structure or container designed to hold water to a depth of greater than 24 inches, intended for swimming or bathing.

USE

The purpose for which land or a building is arranged, designed or intended or for which land or a building may be occupied.

VARIANCE

A modification of the literal provisions of the Zoning Ordinance authorized by the Zoning Board of Appeals according to the provisions of this chapter.

YARD

An open space, on the same lot with a principal building, unoccupied and unobstructed from the ground upward by a building or structure, except as otherwise permitted in this chapter and as defined herein (see Figure 18-2 attached to this chapter).

A. FRONT YARD

An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and the nearest line of the principal building. There shall be

maintained a front yard on each street side of a corner lot and through lot.

B. REAR YARD

An open space extending the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and the nearest line of the principal building. In the case of corner lots, there shall only be one rear yard.

C. SIDE YARD

An open space between the principal building and the side lot line, extending from the front yard to the rear yard, the width of which is the horizontal distance from the nearest point of the side lot line to the nearest line of the principal building.

ZONING ADMINISTRATOR

The authorized individual or agency charged with the responsibility of administering this chapter and appointed by the Village Council.

ZONING COMPLIANCE CERTIFICATE

A written approval issued by the Zoning Administrator that certifies that the proposed activity conforms to the requirements of this chapter. In the case of a single-family dwelling, a building permit may serve as a zoning compliance certificate.

ZONING DISTRICT (DISTRICT)

A portion of the Village within which specific regulations and requirements, or various combinations thereof, apply as provided in this chapter.

- [1] *Editor's Note: See Ch. 143, Construction Codes.*
- [2] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I); this ordinance also repealed the definition of "family home adult foster care facility," which immediately followed this definition. See now "state licensed residential facility" below in this section.*
- [3] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*
- [4] *Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*