

APPENDIX A - ZONING ORDINANCE

An ordinance to regulate the use of land, natural resources and structures; to regulate structures designed for trade, industry, residence or other specified uses; to regulate and limit the height, the area, the size and location of structures hereinafter to be erected or altered; to regulate and determine the area of yards, court, or other open spaces; to control congestion in the streets to secure safety in case of fire, to prevent the overcrowding of land, to bring about the gradual conformity of the uses of land and buildings and for such purposes to divide the city into districts and zones, to establish a board of appeals; to provide for the administration and enforcement of the provisions of this ordinance and to prescribe penalties for the violation thereof.

Footnotes:

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Editor's note— Printed herein is the city's zoning ordinance, Ordinance No. A-80, as adopted on May 8, 2001, and effective on May 23, 2001. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original. Obvious misspellings have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of citations to state statutes and expression of numbers in text as appears in the Code of Ordinances has been used. A consistent scheme of capitalization has also been used. Additions for clarity are indicated by brackets.

ARTICLE I. - GENERAL PROVISIONS AND DEFINITIONS

Sec. 1.10. - Preamble.

Pursuant to the authority conferred by Public Act 207, P.A. 1921 (MCL 125.851 et seq.) (P.A. 285 (MCL 125.31 et seq.)), as amended, of the State of Michigan and for the purpose of promoting and protecting the public health, safety, peace, comforts, convenience and general welfare of the inhabitants of the City of Boyne City by protecting and conserving the character and social and economic stability of the residential, commercial, industrial, and other use areas, by securing the most appropriate use of land; preventing overcrowding; and facilitating adequate and economical provision of transportation, water, sewers, schools, recreation, and other public requirements; and by other means, all in accordance with a comprehensive plan.

Now therefore the City of Boyne City ordains:

Sec. 1.20. - Title.

This ordinance shall be known and may be cited as the "City of Boyne City Zoning Ordinance," and will be referred to herein as "this ordinance."

Sec. 1.30. - Construction of language.

- A. For the purposes of this ordinance, certain terms or words herein shall be interpreted as follows:
1. Words used in the present include the future tense, unless context clearly indicates the contrary;
 2. The singular includes the plural, unless context clearly indicates the contrary;
 3. The word "person" includes an individual, a firm, an association, an organization, a corporation (public or private), a partnership or co-partnership, a limited liability company, an incorporated or unincorporated association, a trust, or any other entity recognizable as a "person" under the laws of the State of Michigan;
 4. The word "lot" is intended to mean the word "plot" or "parcel";
 5. The word "used" or "occupied" as applied to any land or building shall be construed to include the words

"intended," "arranged or designed to be used or occupied";

6. The word "dwelling" includes "residence";
7. The terms "abutting" or "adjacent to" include property "across from," such as across a street, alley, or an easement. This term shall also apply to adjacent zoning districts in an adjacent community;
8. The term "act" or "doing of an act" includes "omission to act";
9. This term "occupied" shall include "arranged," "designed," "built," "altered," "converted to," "rented," "leased" or "intended to be inhabited," not necessarily for dwelling purposes; [and]
10. 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," or "either ... or," the conjunction shall be interpreted as follows:
 - a. "And" indicates that all the connected items, conditions, provisions or events shall apply;
 - b. "Or" indicates that all the connected items, conditions, provisions or events shall apply singly or in any combination (i.e., "or" also means "and/or"); [and]
 - c. "Either ... or" indicates that the connected items, conditions, provisions or events may apply singly.
- B. The particular shall control the general.
- C. In case of any difference of meaning or implication between the text of this ordinance and any caption or illustration, the text shall control.
- D. The word "shall" is also mandatory and not discretionary. The word "may" is permissive.
- E. The word "building" includes the word "structure." A "building" or "structure" includes any part thereof, attached to the building or structure.
- F. For the purpose of this ordinance, terms not herein defined shall have the meaning customarily assigned to them.

Sec. 1.40. - Definitions.

For the purpose of this ordinance, certain terms or words shall be defined as follows:

Access management (access control): A technique to improve traffic operations along a major roadway and decrease the potential for accidents through the control of driveway locations and design; consideration of the relationship of traffic activity for properties adjacent to, and across from, one another; and the promotion of alternatives to direct access.

Access to property, reasonable: A property owner's legal right, incident to property ownership, to access a public road right-of-way. Reasonable access to property may be indirect and certain turning movements may be prohibited for improved safety and traffic operations.

Accessory use: A use customarily incidental or subordinate to the principal use or building and located on the same lot with the principal use or building. Accessory uses include, but are not limited to, garages, storage buildings, home occupations, greenhouses, and swimming pools.

Adequate lateral support: The control of soil movement on a site as determined by accepted engineering standards.

Adult day care facility: A facility which provides daytime care for any part of a day but less than 24-hour care for functionally impaired persons provided through a structured program of social and rehabilitative or maintenance services in a supportive group setting other than the client's home. Such facilities are not licensed, however those receiving funds through an area agency on aging must comply with adult day care standards promulgated by the Michigan Office of Services to the Aging.

Adult foster care facility: A governmental or nongovernmental establishment that provides supervision, personal care, and protection in addition to room and board, for 24 hours a day, five or more days a week, and for two or more consecutive weeks for compensation for adults over 18 years of age. It includes facilities and foster care homes for adults who are aged, mentally ill, developmentally disabled, or physically handicapped who require supervision on an ongoing basis but who do not require continuous nursing care. An adult foster care facility does not include nursing homes, homes for the aged, hospitals, alcohol or substance abuse rehabilitation centers, or residential center for persons released from or assigned to a correctional facility. These facilities are licensed and regulated by the state under Michigan Public Act No. 218 of 1979 (MCL 400.701 et seq.), as amended, and rules promulgated by the Michigan Department of Consumer and Industry Services. Such facilities are classified as follows:

1. *Adult foster care congregate facility:* An adult foster care facility with the approved capacity to receive more than 20 adults to be provided with foster care.
2. *Adult foster care small group home:* An adult foster care facility with the approved capacity to receive 12 or fewer adults to be provided with foster care.
3. *Adult foster care large group home:* An adult foster care facility with approved capacity to receive at least 13 but not more than 20 adults to be provided with foster care.
4. *Adult foster care family home:* A private residence with the approved capacity to receive six or fewer adults to be provided with foster care for 24 hours a day for five or more days a week and for two or more consecutive weeks. The adult foster care family home licensee must be a member of the household and an occupant of the residence.

Adult regulated uses or sexually-oriented businesses:

1. *Uses:* Any business, which primarily features sexually stimulating material and/or performances, including the following uses:
 - A. *Adult business use:* "Adult business use" is specifically defined as follows:
 - 1) *Adult business:* Adult bookstores, adult movie theaters, adult personal service businesses, adult cabarets, massage parlors, tattoo parlors, and nude modeling studios.
 - 2) *Adult bookstore:* An establishment having a substantial portion (more than 20 percent of its stock in trade in books, magazines and other periodicals and/or photographs, drawings, slides, films, videotapes, recording tapes and novelty items which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," (as defined herein) or an establishment with a segment or section devoted to the sale or display of such material, which segment or section exceeds ten percent of the usable floor area of the establishment.
 - 3) *Adult cabaret:*
 - a. *Group A cabaret:* An establishment which features nude or seminude entertainers, topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, nude or seminude waitresses or waiters or similar entertainers, or an establishment which features live entertainment distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
 - b. *Group D cabaret:* An establishment licensed by the Michigan Liquor Control Commission, which establishment offers beer or intoxicating liquor for consumption on the premises and features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, topless waitresses or similar entertainers.

- 4) *Adult model studio*: Any place where models who display "specified anatomical areas" (as defined herein) are observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons who pay so compensation or gratuity. This definition shall not apply to any accredited art school or similar educational institution.
- 5) *Adult motion picture arcade or miniature motion picture theater*: Any place where motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images displayed depict, describe, or relate to "specified sexual activities" or "specified anatomical areas" (as defined herein).
- 6) *Adult movie theater or adult live stage performing theater*: An enclosed building or room used for presenting motion picture films, video cassettes, cable television or any other visual media having as a dominant theme materials distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activity" or "specified anatomical areas" (as defined herein) for observation by patrons therein. Such an establishment is customarily not open to the public generally, but only to one or more classes of the public, excluding any minor by reason of age.
- 7) *Adult outdoor motion picture theater*: A drive-in theater where a substantial portion of the material presented is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (as defined herein) for observation by patrons of theater. Such establishment is customarily not open to the public generally, but only to one or more classes of the public, excluding any minor by reason of age.
- 8) *Adult personal service business*: A business having as its principal activity a person, while nude or while displaying specified anatomical areas (as defined herein), providing personal services for another person. Such a business includes, but is not limited to, modeling studios, body painting studios, wrestling studios and conversation parlors.

Any establishment, club, or business by whatever name designated, which offers or advertises, or is equipped or arranged to provide as part of its services, massages, body rubs, body painting, alcohol rubs, physical stimulation, baths, or other similar treatment by any person. An adult personal service establishment may include, but is not limited to, establishments commonly known as massage parlors, health spas, sauna baths, Turkish bathhouses, and steam baths. The following uses shall not be included within the definition of an adult personal service establishment:

- a. Establishments which routinely provide such services by a licensed physician, a licensed chiropractor, a licensed physical therapist, a licensed practical nurse practitioner, or any other similarly licensed or certified medical professionals;
 - b. Establishments which offer massages performed by certified massage therapists;
 - c. Gymnasiums, fitness centers and health clubs;
 - d. Electrolysis treatment by a licensed operator of electrolysis equipment;
 - e. Continuing instruction in martial or performing arts, or in organized athletic activities;
 - f. Hospitals, nursing homes, medical clinics, or medical offices;
 - g. Barbershops, beauty parlors, hair stylists and salons which offer massages by certified massage therapists; and
 - h. Adult photography studios whose principal business does not include the taking of photographs of "specified anatomical areas" (as defined herein).
- 9) *Adult video store*: An establishment having a substantial portion of its stock-in-trade devoted to the

distribution, display, storage, or on-premises viewing of films, movies, motion pictures, video cassettes, slides, or other visual representations which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" (as defined herein), or an establishment with a segment or section devoted to the sale or display of such material.

- 10) *Sexual paraphernalia store*: An establishment having a substantial portion of its stock-in-trade devoted to the distribution, display, or storage, of instruments, devices, or paraphernalia designed for use related to "specified anatomical areas" or as part of, in connection with, or related to "specified sexual activities" (as defined herein), or an establishment with a segment or section devoted to the sale or display of such material.

B. *Special definitions*. With respect to adult regulated uses or sexually oriented businesses, the following terms and phrases shall have the following meanings:

- 1) *Substantial portion*: A use of activity accounting for more than 20 percent of any one or more of the following: stock-in-trade, sales revenue, display space, floor space, viewing time, movie display time, or entertainment time measured per month.
- 2) *Specified anatomical areas*: Portions of the human body defined as follows:
 - a. Less than completely and opaquely covered:
 - 1) Human genitalia and pubic region;
 - 2) Buttock and anus; and
 - 3) Female breast below a point immediately above the top of the areola; or
 - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- 3) *Specified sexual activities*: The explicit display of one or more of the following:
 - a. Human genitals in a state of sexual stimulation or arousal;
 - b. Fondling or other erotic touching of human genitalia, pubic region, buttocks, anus, or female breast;
 - c. Human sex acts, normal or perverted, actual or simulated including, but not limited to human masturbation, oral copulation, sexual intercourse, or sodomy;
 - d. Human excretory functions as part of, or as related to, any of the activities described above; [or]
 - e. Physical violence, bondage, mutilation, or rape, actual or simulated, as part of or related to, any of the activities described above.
- 4) *Sexual intercourse*: Fellatio, cunnilingus, anal intercourse or any other intrusion, however slight, of any part of a person's body, or of any object, into the genital or anal openings of another's body.
- 5) *Sodomy*: Sexual bestiality.
- 6) *Buttock*: The anus and perineum of any person.
- 7) *Massage parlor*: An establishment wherein private massage is practiced, used or made available as a principal use of the premise[s].
- 8) *Massage*: The manipulation of body muscle or tissue, by rubbing, stroking, kneading, tapping or vibrating, through the use of a physical, mechanical or other device, of the body of another for a fee.
- 9) *Nude modeling studio*: Any building, structure, premises or a part thereof used primarily as a place which offers as its principal activity the providing of models to display specified anatomical areas for artists and photographers for a fee.

Alley: A public or legally established thoroughfare, other than a street, which affords only a secondary means of vehicular access to property abutting thereon.

Alterations: As applied to a building or structure, a change or rearrangement in the structural parts or in the means of egress; a change, addition, enlargement, or modification in construction or type of occupancy, whether by extending on a side or by increasing in height; or the moving from one location or position to another. The consummated act of which may be referred to herein as "altered" or "reconstructed."

Alternative tower structure: Manmade trees, clock towers, bell steeples, light poles and other similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

Animal, wild or exotic: Any animal not domesticated by humans or any animal, which a person is prohibited from possessing by law. Wild or exotic animals shall include, but shall not be limited to, the following: alligator and crocodile (family); deer (family); opossum (family); badger; wild dog or wolf (family); primate excluding humans (family); bear; raccoon; ferret; skunk; wild cat (family); lemur; spider (poisonous); coyote; lizard, snake, and other reptile (poisonous); weasel (family); wild boar or swine (family, not including potbelly pigs); and marten.

Antenna: Any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

Apartment: A suite of rooms or a room in a multiple-family, commercial, or other building arranged and intended for a place of residence of a single family or a group of individuals living together as a single housekeeping unit.

Apartment, accessory: (i.e., "mother-in-law" apartment) A single apartment unit contained within a single-family home, or separate from but contained within the same lot as a single-family home, meeting the regulations of this ordinance.

Appeal: An entreaty or demand for a hearing or review of facts and/or actions in connection with the public enforcement of this zoning ordinance.

Area, gross site: The total area of a planned unit development site including floodplains and wetlands.

Architectural feature: Any building, structure, or significant portion thereof, that is sufficiently distinctive or unusual in design or construction as to warrant the preservation and minimal alteration of its original form. "Architectural features" of a building include cornices, eaves, gutters, belt courses, sills, lintels, bay windows, chimneys and decorative ornaments.

Automotive fueling station: A place where engine fuels are offered for sale (stored only in underground tanks) excluding facilities for automotive repair or serving, and with or without accessory space for the retail sale of automotive or general merchandise, however such space shall be limited to 100 square feet of gross floor space.

Automotive repair station: A place where, along with or without the sale of engine fuels, the following services may be carried out in a completely enclosed building: general repair, engine and transmission rebuilding or reconditioning of motor vehicles; collision service, such as body, frame, or fender straightening and repair, steam cleaning, undercoating and rustproofing; overall painting and undercoating of automobiles; clutch, differential, axle and spring repairs; repairs of the radiator that require removal; recapping or retreading of tires; and similar servicing, rebuilding or repairs that normally require significant disassembly or storing the automobiles on the premises overnight.

Automotive service center/station: A building or structure designed or used for the retail sale of fuel (stored only in underground tanks), lubricants, air, water and other operating commodities for motor vehicles, aircraft or boats, and includes the customary space and facilities for the installation of such commodities on or in such vehicles, including space for facilities for storage, minor repair or servicing, limited to the following: engine tuneups, servicing of spark plugs, batteries, distributors

and distributor parts; servicing of brakes and shocks, air conditioning and exhaust systems; oil change or lubrication; tire servicing and repair to include replacement, wheel balancing and alignment, but not recapping or regrooving; installation or replacement of mufflers and tailpipes, water hoses, fan belts, brake fluid, light bulbs, fuses, floor mats, wiper blades, grease retainers, wheel bearings, mirrors, auto glass, accessory equipment, and the like; radiator cleaning and flushing; fuel pump, oil pump and line repairs; minor servicing and repair of carburetors; or similar servicing or repairs that do not normally require any significant disassembly or storing the automobiles on the premises overnight. Sales of new and used automobiles, trucks, motorcycles, other land vehicle types, boats or other watercraft, aircraft, or sales unrelated to service station uses, are not included.

Automobile wash establishment: A building or portion thereof where automobiles or other vehicles are washed with either self-service mechanisms or the use of a chain conveyor and blower and having, as optional equipment, steam cleaning devices.

Bar, cocktail lounge, or nightclub: An establishment licensed by the State of Michigan to sell at retail and serve alcoholic beverages on the premises where more than 30 percent of the gross floor area is made up of a bar, being a barrier or counter at which any alcoholic beverages are sold or served to and consumed by customers, and also including areas dedicated for the use of stages, dance floors, standing-room areas, pool tables and similar mechanical amusement devices.

Base flood: A flood having a one percent chance of being equaled or exceeded in any given year.

Basement: That portion of a building which is partly or wholly below grade but so located that the vertical distance from mean grade to the floor is greater than the vertical distance from the mean grade to the ceiling. A basement shall not be counted as a story unless over 50 percent of its height is above the level from which the height of the building is measured.

Bedroom: A room in a dwelling unit used for or intended to be used solely for sleeping purposes by human beings.

Berm: A mound of soil graded, shaped and improved with grass or landscaping in such a fashion so as to be utilized for screening purposes.

Block: Property abutting one side of a street and lying between the two nearest intersecting streets or between the nearest such street and railroad right-of-way, unsubdivided acreage, river or stream, or between any of the foregoing and any other barrier to the continuity of development.

Board of appeals: The zoning board of appeals of the City of Boyne City.

Boardinghouse (tourist house): A building, other than a hotel, motel, or bed-and-breakfast inn, where lodging and meals for more than five but no more than 20 persons are served for compensation for a length of stay not to exceed ten days.

Boat: Boats, floats, rafts and the attached normal equipment to transport the same on highways.

Brewpub: A restaurant or tavern (as defined within this ordinance) licensed by the State of Michigan to produce and manufacture not more than 5,000 barrels of beer per calendar year in Michigan, and sell at retail on the premises the beer produced and manufactured for consumption on or off the premises in the manner provided for in MCLA 436.31b and 436.31c.

Buffer zone: A strip of land often required between certain zoning districts or land uses reserved for plant material, berms, walls, or fencing to serve as a visual barrier.

Buildable area: The space remaining on a lot after compliance with the minimum required setbacks of this ordinance.

Building: A structure that encloses space intended for the occupancy of persons or animals or the storage of goods and chattels for purposes of residence, recreation, services and economic enterprises, which structure shall have a roof supported by columns or walls, or some other support mechanism.

Building, accessory: A supplementary building or a portion of a main building, the use of which is incidental to, customarily found in connection with, devoted exclusively to, and subordinate to that of the main building and which is located on the same lot as the main building. "Accessory building" includes garages, garden equipment sheds, small greenhouses, swimming pools, and accessory apartments.

Building height: The vertical distance measured from the natural grade prior to any excavation or construction, to the highest point of the surface for flat roofs; to the deck line of mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

[1.] Where a building is located on sloping terrain, the height shall be measured from the lowest exposed point of a building to the highest point of the roof surface for flat roofs; to the deck line of mansard roofs; and to the mean height between eaves and ridge for gable hip and gambrel roofs.

[2.] For roofs which are not symmetrical, the mean height between the eaves and ridge shall apply to the highest midpoint computed for each separate roof surface. When more than one type of roof is present in a building design, each roof surface shall be considered separately. No roof surface shall exceed the permitted height allowed for that particular roof type.

Building line (setback line): The line which pertains to and defines those minimum (building) setback lines which are established parallel to the front street or right-of-way line and within which setback area no part of a building shall project or be located, except as otherwise provided in this ordinance. Such line, when adjacent to a building, is normally formed by the junction of the line formed by drip edge of home with the finish grade or surface of the adjoining ground.

Building, public and semipublic institutional: Buildings and structures of governmental agencies and nonprofit organizations including, but not limited to, office buildings, churches, municipal parking lots, post offices, libraries, and community centers.

Build-to line: An alignment that dictates the front yard setback from a street or public right-of-way, to be followed by buildings or structures fronting thereon. The build-to line does not apply to building projections or recesses.

Build-up line: An alignment that dictates an average height to the cornice line or to the roof edge line on a street or space.

Camper, pickup: A recreational unit designed to be mounted on a pickup or truck chassis, with sufficient equipment to render it suitable for use as temporary lodging for travel, recreational and vacation uses.

Canopy tree: A deciduous tree whose mature height and branch structure provide foliage primarily on the upper half of the tree. The purposes of a canopy tree are to provide shade to adjacent ground areas and to enhance aesthetics.

Cemetery: Land used or intended to be used for burial of the human dead and dedicated for such purpose.

Certificate of occupancy: A certificate issued by the planning director or zoning administrator, after final inspections, indicating his opinion that all the provisions of this ordinance are being complied with and met. No building or structure or use for which a zoning permit has been issued shall be occupied until the planning director has, after final inspection, issued a certificate of occupancy (CO). The issuance of a certificate of occupancy shall in no case be construed as waiving any provisions of this ordinance.

Childcare organization: A governmental or nongovernmental organization having as its principal function the receiving of minor children for care, maintenance, training, and supervision, notwithstanding that educational instruction may be given. These facilities care for children under the age of 18 years of age, and are licensed and regulated by the state under Act No. 116 of the Public Acts of 1973 (MCL 722.111 et seq.), as amended, and Act No. 218 of the Public Acts of 1979 (MCL 400.701 et seq.), as amended, and the associated rules promulgated by the state department of consumer and industry services. Such care organizations are classified below:

1. *Childcare center or daycare center:* A facility other than a private residence, receiving one or more preschool or school children for group daycare for periods of less than 24-hours a day, and where the parents or guardians are not immediately available to the child. It includes a facility, which provides care for not less than two consecutive weeks, regardless of number of hours of care per day. The facility is generally described as a childcare center, daycare center, day nurseries, school, parent cooperative preschool, play group, or drop-in center. "Childcare center" or "daycare center" does not include Sunday school conducted by a religious institution or a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services.
2. *Child caring institution:* A child care facility which is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in a building maintained for that purpose, and operates throughout the year. It includes a maternity home for the care of unmarried mothers who are minors, an agency group home, and institutions for mentally retarded or emotionally disturbed minor children. It does not include hospitals, nursing homes, boarding schools, or an adult foster care facility in which a child has been placed.
3. *Foster family home:* A private home in which one but not more than four minor children, who are not related to an adult member of the household by blood, marriage, or adoption, are given care and supervision for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent or legal guardian.
4. *Foster family group home:* A private home in which more than four but less than seven children, who are not related to an adult member of the household by blood, marriage, or adoption, are provided care for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent or legal guardian.
5. *Family day care home:* A private home in which one but less than seven minor children are received for care and supervision for periods of less than 24-hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. It includes a home that gives care to an unrelated child for more than four weeks during a calendar year.
6. *Group day care home:* A private home in which more than six but not more than 12 children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian except children related to an adult member of the family by blood, marriage, or adoption. It includes a home that gives care to an unrelated child for more than four weeks during a calendar year.

Church: A building, the primary use of which is regular assembly of persons for religious worship or services, together with accessory uses.

Clinic: An establishment where human patients who are not lodged overnight are admitted for examination and treatment by a group of physicians, dentists or similar professionals on an outpatient basis only. A clinic may incorporate customary laboratories and pharmacies incidental or necessary to its operation or to the service of its patients, but may not include facilities for inpatient care or major surgery.

Club: An organization of persons for special purposes or for the promulgation of sports, arts, sciences, literature, politics, or the like, but not operated for profit.

Cluster housing: A group of buildings and especially houses built close together to form relatively compact units on a sizable tract in order to preserve open spaces and environmentally sensitive areas larger than the individual yards for common recreation.

Commercial center, planned: A business development under single ownership consisting of two or more retail or service outlets characterized by common architecture, a pedestrian and vehicle circulation system, and off-street parking.

Comprehensive plan (master plan): The master plan including graphic[s] and written proposals indicating the development goals and objectives, the planned future use of all land within the City of Boyne City, as well as the general location for streets, parks, schools, public buildings, and all physical development of the City of Boyne City, and includes any unit or part of such plan, and any amendment to such plan or part thereof. Such plan shall be adopted by the planning commission and may or may not be adopted by city commission.

Condominium: A condominium is a system of separate ownership of individual units and/or multiple-unit projects according to Public Act [No.] 59 of 1978 (MCL 559.101 et seq.), as amended. In addition to the interest acquired in a particular unit, each unit owner is also a tenant in common in the underlying fee and in the spaces and building parts used in common by all the unit owners.

Condominium Act: State of Michigan Public Act [No.] 59 of 1978 (MCL 559.101 et seq.), as amended.

Condominium, contractible: A condominium project from which any portion of the submitted land or building may be withdrawn in pursuant to express provisions in the condominium documents and in accordance with the City of Boyne City Code of Ordinances and the Condominium Act.

Condominium, conversion: A condominium project containing condominium units some or all of which were occupied before the establishment of the condominium project.

Condominium, convertible area: A unit or a portion of the common elements of the condominium project referred to in the condominium documents within which additional condominium units or general or limited common elements may be created pursuant to provisions in the condominium documents and in accordance with this ordinance and the Condominium Act.

Condominium, expandable: A condominium project to which additional land may be added pursuant to express provision in the condominium documents and in accordance with this ordinance and the Condominium Act.

Condominium, general common element: The common elements other than the limited common elements intended for the common use of all co-owners.

Condominium - limited common element: A portion of the common elements reserved in the master deed for the exclusive use of less than all of the co-owners.

Condominium master deed: The condominium document recording the condominium project as approved by the city including attached exhibits and incorporated by reference the approved bylaws for the project and the approved condominium subdivision plan for the project.

Condominium, site condominium project: A condominium project designed to function in a similar manner, or as an alternative, to a platted subdivision. A residential site condominium project shall be considered as equivalent to a platted subdivision for purposes of regulation in this ordinance.

Condominium subdivision plan: Drawings and information which show the size, location, area, and boundaries of each condominium unit, building locations, the nature, location, and approximate size of common elements, and other information required by section 66 of Public Act 59 of 1978, as amended.

Condominium unit site (i.e., site condominium lot): The area designating the perimeter within which the condominium unit must be built. After construction of the condominium unit, the balance of the condominium unit site shall become a limited common element. The term "condominium unit site" shall be equivalent to the term "lot" for purposes of determining compliance of a site condominium subdivision with the provisions of this ordinance pertaining to minimum lot size, minimum lot width, minimum lot coverage and maximum floor area ratio. Condominium setbacks shall be measured as described below:

1. *Front yard setback:* The distance between the public street right-of-way or private road easement line and the

eave overhang of the unit site. Where there is no public right-of-way or access easement, the front yard setback required in the district shall be measured from 15 feet from the nearest pavement edge to the eave overhang of the unit.

2. *Side yard setback:* The distance between the side of a condominium building unit and the side unit (lot) line. Where no unit (lot) lines are provided, the distance between the closest points of two units shall be double the side yard setback required in the zoning district.
3. *Rear yard setback:* The perimeter shall be the distance between the limit of the development and the rear of the unit; within the development rear yards setbacks shall be measured as the distance between the rear building line and the rear site (lot) line, or where lot lines are not defined, the space between the rear building lines of two buildings shall be double the rear yard setback required in the zoning district.

Condominium unit: The portion of the condominium project designed and intended for separate ownership as described in the master deed, regardless of whether it is intended for residential, office, industrial, business, recreational, use as a timeshare unit, or any other type of use.

Convalescent home or nursing home: A home for the care of children, the aged or the infirm, or a place of rest for persons suffering serious bodily disorders, wherein two or more persons are cared for. Such home shall also conform to and qualify for a license under applicable state laws (Public Act 139 of 1956, as amended).

Court: A yard, other than a required open space, on the same lot with a building or group of buildings, and which is bounded on two or more sides by such building or buildings.

Cul-de-sac: A dead-end public or private street, which terminates in a circular or semicircular section of street which allows for vehicle turnaround.

Density: The number of dwelling units situated on or to be developed per net or gross acre of land.

Detention facility: A facility designed for holding stormwater runoff for a short period of time and then releasing it to the natural watercourse where it returns to the hydrologic cycle.

Development: The construction of a new building or other structures on a zoning lot, the relocation of an existing building on another zoning lot, or the use of open land for a new use.

Development plan: A scaled drawing which shows the existing conditions, the location and dimensions of improvements upon a parcel of land, including, but not limited to, location and size of buildings, driveways, parking areas, landscaping, sidewalks, signs, sewage systems, and drainage facilities, environmental features, and other elements required herein as applicable to the proposed development to ensure compliance with this ordinance.

District: A section or sections of the city for which the zoning regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform. A portion of the city within which certain uses of land and/or buildings are permitted and within which certain regulations and requirements apply under this zoning ordinance. This term is synonymous with the term "zone" or "zoning district."

Drainageways and streams: Permanent or intermittent watercourses.

Drive-in establishment: A business establishment so developed that its principal retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serve patrons while in or momentarily stepped away from their motor vehicles, rather than within a building or structure, so that consumption within motor vehicles may be facilitated.

Drive-through establishment: A business establishment so developed that its principal retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles to service patrons from a window or booth while in their motor vehicles, rather than within a building or structure, so that consumption off the premises may be facilitated. This is distinguished from a retail establishment whose primary function is service to customers inside a building, but which has a supplementary drive-through facility.

Dwelling: Any structure, building, or portion thereof, on-site built, prefabricated, preassembled, or pre-built, having cooking facilities and contains lavatory and bathing facilities in a separate room, which is designed, used, and occupied wholly as the home, residence or sleeping place for complete living accommodations of one family, either permanently or transiently.

Dwelling, attached: A dwelling unit attached to one or more dwelling units by common major structural elements.

Dwelling, detached: A dwelling unit, which is not attached to any other dwelling unit by any means.

Dwelling, efficiency unit: A dwelling unit consisting of one room, exclusive of a bathroom, kitchen, hallway, closet or dining alcove directly off the principal room providing not less than 350 square feet of floor area.

Dwelling, manufactured home: A building or portion of a building designed for long-term residential use and characterized by all of the following:

1. The structure is produced in a factory and is in compliance with all applicable codes to be classified and used as a dwelling;
2. The structure is designed to be transported to the site in a nearly complete form, where it is placed on a foundation and connected to utilities;
3. The structure is designed to be used as either an independent building or as a module to be combined with other elements to form a complete building on the site.

A mobile home and modular home are considered manufactured homes.

Dwelling, mobile home: A structure, transportable in one or more sections, which is built upon 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. Recreational vehicles as described and regulated herein shall not be considered "mobile homes" for the purposes of this ordinance.

Dwelling, modular home: A dwelling which consists of prefabricated units transported to the site in two or more sections on a removable undercarriage or flat-bed and assembled for permanent location upon a permanent foundation on the lot, and to which such major elements as the heating system or a substantial portion of the siding are installed after transport, and which shall not be considered a mobile home.

Dwelling, multiple: A building or portion thereof containing three or more dwelling units and designed for, and occupied as, the home of three or more families living independently of each other.

Dwelling, right-of-way, terrace, or townhouse: A freestanding building of not less than four dwelling units arranged laterally, each with individual outside entrances and not more than two stories in height. A dwelling unit, complete with utilities and sleeping quarters, may occupy one or two floors. Each dwelling unit, or units when arranged vertically, shall comprise a section, and there shall be, as a minimum, a fireproof wall without doors, windows or other openings separating any two sections from any other section or sections.

Dwelling, single-family: A building containing one dwelling unit and designed for, or occupied by, only one family.

Dwelling, site built: A dwelling unit, which is substantially built, constructed, assembled, and finished on the premises which are intended to serve as its final location. Site-built dwelling units shall include dwelling units constructed of pre-cut materials, and paneled wall, roof and floor sections when such sections require substantial assembly and finishing on the premises which are intended to serve as its final location.

Dwelling, two-family: A building containing two dwelling units and designed for, and occupied as, the home of two families living independently of each other.

Easement: A grant of one or more of the property rights by a property owner to and/or for use by the public, or another person or entity.

Erected: Built, constructed, reconstructed, moved upon or any physical operation on the premises required for the building. Excavations, fill, drainage and the like shall be considered a part of erection.

Essential public service building: A building or structure principal or accessory to an essential public service.

Essential public service building storage yard: An outdoor storage area principal or accessory to an essential public service.

Essential services: The erection, construction, alteration, or maintenance by public utilities or municipal departments, commissions, or boards of underground or overhead gas, electrical, steam, telephone, fiberoptic, internet, community antenna television (CATV), water, sewer, or other transmission, distribution, collection, supply or disposal systems including poles, wires, mains, pipes, conduits, cables, hydrants, and other similar equipment and appurtenances necessary for such systems to furnish an adequate level of service. Telecommunication towers or facilities, alternative tower structures, and wireless communication facilities antenna are specifically excluded from this definition.

Excavation: Any breaking of ground, except common household gardening and ground care.

Family: An individual or group of two or more persons related by blood, marriage or adoption, together with foster children or servants of the principal occupants, with not more than two additional unrelated persons, who are domiciled together as a single, domestic, housekeeping unit in a dwelling unit; or a collective number of individuals domiciled together in one dwelling unit whose relationship is of a continuous, nontransient, domestic character and who are cooking and living as a single, nonprofit housekeeping unit. This definition shall not include any 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 of other similar determinable periods.

Fence: A [An] accessory structure of definite height and location intended to serve as: a physical barrier to property ingress or egress; a screen from objectionable vista or noise; a marker; an enclosure in carrying out the requirements of this ordinance; or for decorative use.

Fence, obscuring: A structure of definite height and location to serve as an obscuring screen in carrying out the requirements of this ordinance.

Filling: The depositing or dumping of any matter onto, or into the ground, except common household gardening and general farm care.

Flood or flooding: A general and temporary condition of partial or complete inundation of normally dry areas from:

- 1) The overflow of inland or tidal waters; and
- 2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood hazard area: Land which on the basis of available floodplain information is subject to a one percent or greater chance of flooding in any given year.

Flood hazard boundary map (FHBM): An official map of a community, issued by the Federal Insurance Administration, where the boundaries of the areas of special flood hazards have been designated as zone A.

Flood insurance rate map (FIRM): An official map of a community, issued by the Federal Insurance Administration, which has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood insurance study: The official report provided by the Federal Insurance Administration. The report contains flood profiles, as well as the flood hazard boundary-floodway map, and the water surface elevation of the base flood.

Flooding, area of shallow: A designated AO zone on the flood insurance rate map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and indeterminate, and where velocity flow may be evident.

Flooding, ordinary high water mark: The line between upland and bottomland which persists through successive changes in water levels below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface soil, and the vegetation.

Floodplain: Any land area susceptible to being inundated by water from any source. (See "flood.")

Floodway: The channel of a river or other watercourse and the adjacent land areas designated in the flood insurance study which must be reserved in order to discharge the base flood.

Floor area: The sum of the gross horizontal areas of several stories of the building measured from the exterior faces of the exterior walls or from the center line of party walls, but not including porches (enclosed or unenclosed), breeze ways, garages (attached or unattached), basements, utility rooms, unfinished attics, or any space devoted to off-street parking or loading. The "floor area" of a building, which is what this normally is referred to as, includes the basement floor area when more than one-half of the basement height is above the established curb level or finished lot grade, whichever is higher.

Floor area, gross leasable area (GLA): The total floor area designed for tenant occupancy and exclusive use, including basements, mezzanines and upper floors, if any, expressed in square feet and measured from the centerline of joint partitions and from outside wall faces. It is all the floor area on which tenants pay rent.

Floor area ratio (FAR): The ratio between the maximum allowable amount of floor space on all floors in a building and the total area of the lot on which the building is located. Example: a FAR of 2.0 would allow floor space of twice the lot area, or a four-story, building covering one-half of the lot. A FAR of 0.5 would allow floor space of one-half the lot area, or a two-story building covering one-quarter of the lot.

Floor area, usable: That portion of the floor area, measured from the interior face of the exterior walls, used for or intended to be used for services to the public or to customers, patrons, clients or patients, including areas occupied by fixtures or equipment used for the display or sale of goods or merchandise, but not including areas used or intended to be used for the storage of merchandise, utility or mechanical equipment rooms or sanitary facilities. In the case of a half story, the usable floor area shall be considered to be only that portion having a clear height above it of four feet or more.

Food: As used in connection with restaurant facilities, this term includes frozen desserts and nonalcoholic beverages.

Frontage: All the property on one side of a street between two intersecting streets (crossing or terminating) measured along the right-of-way line of the street.

Garage, community: An accessory building for the storage of non-commercial vehicles, with no public shop or service facilities in connection therewith.

Garage, private: A garage for four or fewer passenger motor vehicles, without provision for repairing or servicing such vehicles for profit.

Garage, public: A building or structure for the storage or parking of more than four passenger motor vehicles or motor-powered boats, or more than one commercial motor vehicle, and in which provision may be made for the dispensing of gasoline, oil or similar products for the servicing of such vehicles. A public garage shall be classified according to its specific use in one of the following groups:

1. *Group 1:* A public garage in which provision is made for the care, storage, repair or painting of motor vehicles; or
2. *Group 2:* A public garage used exclusively for passenger vehicles that will accommodate not more than nine passengers.

Garbage: All refuse, and accumulation of all waste, animal, fish, fowl, fruit or vegetable matter incident to the preparation, use, cooking, dealing in or storage of meat, fish, fowl, fruit and vegetables, including spoiled food, dead animals, animal manure and fowl manure.

Garden center: An establishment with retail sales of trees, fruits, vegetables, shrubbery, plants, seeds, topsoil, humus, fertilizer, trellises, lawn furniture, playground equipment and other home garden supplies, landscaping materials, and equipment.

Glare: The effect produced by brightness or a source of illumination sufficient to cause annoyance, discomfort, or loss in visual performance and visibility.

Grade:

- A. For buildings having walls adjoining one street only, the elevation of the sidewalk at the center of the wall adjoining the street;
- B. For the buildings having walls adjoining more than one street, the average of the elevation of the sidewalks at the centers of all walls adjoining the streets; [and]
- C. For buildings having no wall adjoining the sidewalks or street, the average level of the finished surface of the ground adjacent to the exterior walls of the building.

Grade, average: The arithmetic average of the lowest and highest grade elevations in an area within five feet of the foundation line of a building or structure.

Grade, finished: The lowest point of elevation between the exterior wall of the structure and a line five feet from the exterior wall of the structure.

Grade, natural: The elevation of the ground surface in its natural state, before construction begins.

Greenbelt: A strip of land, not less than five feet in width, which is planted with trees or shrubs acceptable in species and caliber to the planning commission and/or planning director and in compliance with the requirements of this ordinance.

Harmful increase: An unnaturally high stage on a river, stream or lake that causes, or may cause damage to property, threat to life, personal injury, or damage to land or water resources.

High water elevation: For Lake Charlevoix, this is the highest water level elevation for Lake Michigan/Huron as recorded by the United States Army Corps of Engineers, (582.4' I.G.L.D.). For all other lakes and streams, this level is the 100-year floodplain.

Home occupation: Any use customarily conducted entirely within the dwelling and carried on by the inhabitants thereof, not involving more than one employee other than members of the immediate family residing on the premises, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, does not change the character thereof, and does not endanger the health, safety and welfare of any other person residing in that area by reason of noise, noxious odors, unsanitary or unsightly conditions, fire hazards and the like, involved in or resulting from such occupation, profession or hobby. However, no article or service shall be sold or offered for sale on the premises, except such as is produced by such occupation, and such

occupation shall not require internal or external alterations or construction features, equipment, machinery, commercial vehicles or other vehicles not customarily used by members of the immediate family, outdoor storage of materials, equipment, machinery, and vehicles, signs not exceeding two square feet in area, or delivery of materials except by common ground carrier.

Hospital: A building, structure or institution in which sick or injured persons, primarily inpatients, are given medical or surgical treatment, and operating under a license by the state department of public health.

Hotel: Any building containing six or more guestrooms intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests. A building or part of a building, with a common entrance or entrances, in which the dwelling units or rooming units are used primarily for transient occupancy, and in which one or more of the following services are offered:

- (1) Maid service;
- (2) Furnishing of linen;
- (3) Telephone, secretarial, or desk service;
- (4) Bellboy service.

A hotel may include a restaurant or cocktail lounge, public banquet halls, ballrooms, or meeting rooms.

Housing for the elderly: An institution other than a hospital or hotel, which provides room and board to non-transient persons primarily 60 years of age or older. Housing for the elderly may include:

1. *Senior apartments:* Multiple-family dwelling units occupied by persons 55 years of age or older.
2. *Elderly housing complex:* A building or group of buildings containing dwellings where the occupancy is restricted to persons 60 years of age or older or couples where either the husband or wife is 60 years of age or older.
3. *Congregate or interim care housing:* A semi-independent housing facility containing congregate kitchen, dining, and living areas, but with separate sleeping rooms. Such facilities typically provide special support services, such as transportation and limited medical care.
4. *Dependent housing facilities:* Facilities such as convalescent homes and nursing homes which are designed for older persons who need a wide range of health and support services, including personal nursing care.

Housekeeping unit: A dwelling unit organized as a single entity in which the members share common kitchen facilities and have access to all parts of the dwelling.

Junk: Any motor vehicle, machinery, appliance, product, merchandise with parts missing, scrap metal or other scrap material that is damaged, deteriorated or in a condition which cannot be used for the purpose for which the product was manufactured.

Junkyard: An open area licensed by the State of Michigan where waste, used or secondhand material is bought and sold, exchanged, stored, baled, packed, disassembled, or handled including but not limited to scrap iron and other metals, paper rags, rubber tires, and bottles. A "junkyard" includes automobile wrecking yards and includes any area of more than 200 square feet for storage, keeping or abandonment of junk but does not include uses established entirely within enclosed buildings. The term "junkyard" does not include drop-off stations for residential recyclables.

Kennel: A structure used for the harboring of more than two dogs that are more than six months old.

Kennel, commercial: Any lot or premises on which three or more dogs, cats or other household pets, six months old or older, are either permanently or temporarily boarded for sale, breeding, boarding, or training purposes. [Commercial] kennels shall also include any lot or premises where household pets are bred and/or sold.

Laboratory: A place devoted to experimental study such as testing and analyzing, but not devoted to the manufacturing of a product or products.

Land, common: A parcel or parcels of land with the improvements thereon, the use, maintenance and enjoyment of which are intended to be shared by the owners and/or occupants of individual building units in a subdivision or a planned unit development.

Landfill: A parcel of land or part thereof licensed by the State of Michigan used primarily for the disposal by abandonment, burial, dumping, burning or any other means and for whatever purpose, of garbage sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof, or waste material of any kind.

Landmark tree: Any tree of stature standing alone in the open; or any tree which stands obviously apart from others within the immediate vicinity by size, form or species. Trees equal to or greater than the diameters shown below will generally be considered a landmark tree regardless of location:

Common Name	Diameter in Inches at Four Feet
American Hornbeam	8
Arborvitae	18
Ash	24
Basswood	24
Beech, American	18
Beech, Blue	8
Birch	18
Black Walnut	24
Catalpa	24
Cedar, Red	12
Chestnut	18
Crabapple/Hawthorne	8
Dogwood, Flowering	8
Elm	24
Fir	18
Ginkgo	18
Hackberry	24
Hemlock	18
Hickory	18
Honey Locust	24
Kentucky Coffeetree	18
Larch/Tamarack	12
London Plane, Sycamore	24
Maple	18
Oak	18
Pine	18
Redbud	8
Sassafras	18
Serviceberry	8
Spruce	18
Sweetgum	16
Tulip Popular	24
Wild Cherry	18

Witch Hazel	8
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Lane, acceleration: An added roadway lane that permits vehicles to increase speed and enter the main vehicle stream after exiting a driveway or other access point.

Lane, deceleration: An added roadway lane that permits vehicles to slow down and leave the main vehicle stream before turning.

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 and unloading merchandise or materials.

Lodginghouse: A building or portion thereof containing not more than five guestrooms which are used by not more than five guests where rent is paid in money, goods, labor or otherwise. A lodginghouse shall comply with all the requirements for dwellings.

Lot: A platted lot of a recorded subdivision or a parcel of contiguous land in the same ownership which is not divided by any public highway or alley, including any part thereof subject to any easement for any purpose other than a public highway or alley, excluding any part thereof severed from another lot where the severance creates any nonconformity of use or structure.

Lot, corner: A lot where the interior angle of two adjacent sides at the intersection of two streets is less than 135 degrees. A lot abutting upon a curved street shall be considered a corner lot for the purposes of this ordinance if the arc is of less radius than 150 feet and the tangents to the curve, at the two points where the lot lines meet the curve or the straight street line extended, form an interior angle of less than 135 degrees.

Lot, interior: Any lot other than a corner lot.

Lot, nonconforming: A lot of record which does not meet the dimensional requirements of this ordinance.

Lot, through (double frontage): Any interior lot having frontage on two more or less parallel streets as distinguished from a corner lot. In the case of a right-of-way of double frontage lots, all sides of said lots adjacent to streets shall be considered frontage, and front yards shall be provided as required.

Lot area, gross: The net lot area plus any portion of adjoining public lands deemed proper to be included by the planning commission.

Lot area, net: The total horizontal area within the lot lines of a lot.

Lot coverage: The part or percent of the lot occupied by buildings or structures, including accessory buildings or structures, and permanent swimming pools.

Lot depth: The horizontal distance between the front and rear lot lines, measured along the median between the side lot lines.

Lot frontage: The length of the front lot line. (See also "frontage.")

Lot lines: The lines bounding a lot as defined herein:

1. *Front lot line:* In the case of an interior lot, is that line separating said lot from the street. In the case of a corner lot, or double frontage lot, it is that line separating said lot from that street which is designated as the front street in the plat or in the request for the zoning permit.
2. *Rear lot line:* That lot line opposite the front lot line. In the case of a lot pointed at the rear the rear lot line shall be an imaginary line parallel to the front line, not less than ten feet long, lying farthest from the front lot line and

wholly within the lot.

3. *Side lot line*: Any lot line other than the front lot line or rear lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

Lot of record: A lot, the dimension and configuration of which are shown on a map recorded in the office of the county register of deeds, or a lot or parcel described by metes and bounds, the accuracy of which is attested to by a professional engineer or land surveyor (registered and licensed in the state and likewise recorded on a file with the county.)

Lot width: The horizontal distance between the side lot lines, measured at the two points where the building line, or front, intersects the side lot lines.

Main building: A building in which is conducted the principal use of the lot upon which it is situated.

Main use: The principal use to which the premises are devoted and the principal purpose for which the premises exist.

Manufactured housing development: A parcel or tract of land under the control of a person upon which three or more manufactured homes are located on a continual non-recreational basis and which is offered to the public for that purpose regardless of whether a charge is made therefore, together with any building, structure, enclosure, street, equipment, or facility used or intended for use incident to the occupancy of a manufactured home, subject to conditions set forth in the Michigan Manufactured Housing Commission Rules and Michigan Public Act 96 of 1987 as amended. Seasonal mobile home parks as defined by the act are not manufactured housing developments.

Marina: A facility for the storing, servicing, fueling, birthing and servicing of boats and may include eating and retail facilities for owners, crews and guests.

Marquee: A rooflike structure of a permanent nature projecting from the wall of a building.

Massage therapist (certified): An individual specifically trained and certified in massage therapy and the healing arts by the American Massage Therapy Association or similar organizations.

Mezzanine: An intermediate or fractional story between the floor and ceiling of any story occupying not more than one-third of the floor area of such story. A mezzanine shall be a full story when it covers more than 50 percent of the area of the story underneath such mezzanine or if the vertical distance from the floor next below it to the floor next above it is 24 feet or more.

Microbrewery: A brewer licensed by the State of Michigan which produces and manufactures in total less than 30,000 barrels of beer per year, and who may sell at the licensed brewery premises the beer produced and manufactured to consumers for consumption on or off the licensed brewery premises. In determining the 30,000-barrel threshold, all brands and labels of a brewer, whether brewed in this state or outside this state, shall be combined and all facilities for the production and manufacture of beer that are owned or controlled by the person shall be treated as a single facility.

Mobile home park (manufactured housing development): A parcel or tract of land under the control of a person upon which three or more mobile homes are located on a continual nonrecreational basis and which is offered to the public for that purpose regardless of whether a charge is made therefor, together with any building, structure, enclosure, street, equipment, or facility used or intended for use incident to the occupancy of a mobile home and which is not intended for use as a temporary trailer park, subject to conditions set forth in the Michigan Manufactured Housing Commission Rules and Michigan Public Act 419 of 1976, as amended.

Modular home: A dwelling which consists of prefabricated units transported to the site in two or more sections on a removable undercarriage or flatbed and assembled for permanent location upon a permanent foundation on the lot, and to which such major elements as the heating system or a substantial portion of the siding are installed after transport, and which shall not be considered a mobile home.

Motel (motor court): A series of attached, semi-detached or detached rental units containing a bedroom, bathroom and closet space. Units shall provide for overnight lodging and are offered to the public for compensation, and shall cater primarily to the public traveling by motor vehicle.

Motor home park (trailer court): Any plot of ground upon which two or more motor homes occupied for dwelling or sleeping purposes are located.

Municipality: The City of Boyne City.

New construction: Structures for which the "start of construction" commenced on or after the effective date of this ordinance.

Nonconforming building: A building or portion thereof lawfully existing at the effective date of this ordinance, or amendments thereto, and that does not conform to the provisions of the ordinance in the district in which it is located.

Nonconforming use: A use which lawfully occupied a building or land at the effective date of this ordinance, or amendments thereto, and that does not conform to the use regulations of the district in which it is located.

Nuisance factors: An offensive, annoying, unpleasant, or obnoxious thing or practice, a cause or source of annoyance, especially a continuing or repeating invasion of any physical characteristics of an activity or use across a property line which can be perceived by or affected a human being, or the generation of an excessive or concentrated movement of people or things such as:

- (a) Noise;
- (b) Dust;
- (c) Smoke;
- (d) Odor;
- (e) Glare;
- (f) Fumes;
- (g) Flashes;
- (h) Vibration;
- (i) Shock waves;
- (j) Heat;
- (k) Electronic or atomic radiation;
- (l) Objectionable effluent;
- (m) Noise of congregation of people, particularly at night; or
- (n) Passenger traffic.

Nursery: A space, building or structure, or combination thereof, for the storage of live trees, shrubs or plants offered for retail sale on the premises including products used for gardening or landscaping. The definition of nursery within the meaning of this zoning ordinance does not include any space, building or structure used for the sale of fruits, vegetables or Christmas trees.

Nursing homes: A home for the care of the aged, infirm, or those suffering from bodily disorders, wherein two or more persons are housed or lodged and furnished with nursing care. Such facilities are licensed in accordance with Michigan Public Act 139 of 1956, as amended, including convalescent homes or rest homes.

Occupancy: The purpose for which a building or part thereof is used or intended to be used.

Occupancy load: The number of individuals normally occupying a building or part thereof or for which the exitway facilities have been designed.

Offset: The distance between the centerlines of driveways or streets across the street from one another.

Open-air business:

1. The retail sale of trees, shrubbery, plants, flowers, seeds, topsoil, humus, fertilizers, trellises, lawn furniture, playground equipment and other home garden supplies and equipment;
2. The retail sale of fruit and vegetables;
3. Tennis courts, archery courts, shuffleboard courts, horseshoe courts, miniature golf, golf driving ranges, children's amusement parks and/or similar recreation uses;
4. Bicycle, utility truck or trailer, motor vehicle, boat or home equipment sale, rental or repair services; and
5. The outdoor display and sale of garages, swimming pools, motor homes, mobile homes, snowmobiles, farm implements and similar products.

Open space: Lands open from ground to sky and devoted to outdoor recreation space, greenery, and resource protection. Developed open space may include, but is not limited to, playground fixtures, shelters, and tennis courts.

Open space, common: An unoccupied area within a planned unit development which is reserved primarily for the leisure and recreational use of all the planned unit development residents, owners and occupants, and generally owned and maintained in common by them, often through a homeowners association.

Open space, public: Any primarily undeveloped land, intended for passive recreational pursuits, within the jurisdiction and control of a government agency.

Outlot: A parcel of land which must be designated on a recorded plat as an outlot before it may be legally considered as such.

Parking lot, off-street: A facility providing vehicular parking spaces along with adequate drives and aisles, for maneuvering, so as to provide access for entrance and exit for the parking of more than two vehicles.

Park, municipal: A parcel of land that is used as a park and is operated under the supervision of the city.

Park, public: Any developed or undeveloped park, playground, beach, outdoor swimming pool, golf course, tennis courts, or otherwise intended for active recreational pursuits, within the jurisdiction and control of a government agency.

Parking space: An area for each automobile or motor vehicle, such space being exclusive of necessary drives, aisles, entrances or exits, and being fully accessible for the storage or parking of self-propelled vehicles.

Party store: A retail establishment licensed by the State of Michigan where more than ten percent of the gross floor area is utilized for the storage, display, and sale of alcoholic liquor, wine, beer, and other alcoholic beverages in the original package for consumption off the premises.

Pavement or hard surface: Plant-mixed bituminous material, concrete, and brick or masonry pavers meeting the construction specifications of the City of Boyer City.

Plat: A map of a subdivision of land.

Pool, wading: Any receptacle utilized for holding water, which has a water depth not exceeding two feet.

Pool, swimming: Any structure or container located above or below grade designed to hold water to a depth of greater than 24 inches and intended for swimming or bathing. A swimming pool shall be considered an accessory building for the purpose of determining required yard spaces and maximum lot coverage.

Porch, enclosed: A covered entrance to a building or structure which is totally enclosed, which projects out from the main wall of such building or structure and which has a separate roof or an integral roof with the principal building or structure to which it is attached. Porches enclosed with materials other than screening shall observe the established front setback line.

Porch, open: A covered entrance to a building or structure which is unenclosed, except for columns supporting the porch roof, which projects out from the main wall of such building or structure and which has a separate roof or an integral roof with the principal building or structure to which it is attached. Open porches may not be enclosed with materials other than screening if such enclosure violates the established front setback line.

Property line: The lines bounding a lot, the lot line.

Public house (pub) or tavern: A restaurant licensed by the State of Michigan to sell at retail and serve alcoholic beverages on the premises where less than 30 percent of the gross floor area is made up of a bar, being a barrier or counter at which any alcoholic beverages are sold or served to and consumed by customers, and also including areas dedicated for the use of stages, dance floors, standing-room areas, pool tables and other mechanical amusement devices.

Public notice: A notice of the time, date, place and purpose of a public hearing, which notice, except where otherwise expressly provided in this ordinance, shall be published in a newspaper having a general circulation in the city not less than 15 days prior to the date of such hearing.

Public service: Public service facilities within the context of this ordinance shall include such uses and services as voting booths, pumping stations, fire halls, police stations, public health activities and similar uses including essential public services.

Radioactive materials: Materials defined as radioactive under State of Michigan regulations for transportation of radioactive materials or under county health department regulations, whichever is determined to be applicable.

Recreation land: Any public or private owned lot or parcel that is utilized for recreation activities such as, but not limited to camping, swimming, picnicking, hiking, nature study, hunting, boating, and fishing.

Recreation establishment, indoor: A privately owned facility designed and equipped for the conduct of sports, amusement or leisure time activities and other customary recreational activities indoors (within an enclosed building) and operated as a business and open for use by the public for a fee, such as gymnasiums and fitness centers, bowling alleys, indoor soccer facilities, racquetball and tennis clubs, ice and roller skating rinks, curling centers, and firearms ranges.

Recreation establishment, outdoor: A privately owned facility designed and equipped for the conduct of sports, amusement or leisure time activities and other customary recreational activities outdoors (outside of an enclosed building) and operated as a business and open for use by the public for a fee such as tennis clubs, archery ranges, golf courses, miniature golf courses, golf driving ranges, water slides, batting cages and machines, skateboarding parks, and children's amusement parks.

Recreational vehicle: Recreational vehicles shall include the following:

1. *Travel trailer:* A portable vehicle on a chassis, which is designed to be used as a temporary dwelling during travel, recreational, and vacation uses, and which may be identified as a travel trailer by the manufacturer. Travel trailers generally contain sanitary, water, and electrical facilities.
2. *Pickup camper:* A structure designed to be mounted on a pickup or truck chassis with sufficient equipment to render it suitable for use as a temporary dwelling during the process of travel, recreational, and vacation uses.
3. *Motor home (trailer coach):* A self-propelled motorized recreational vehicle intended, designed, used, or

constructed and duly licensable for travel and/or recreational usage, and for temporary human habitation, sleeping, and/or cooking and eating for one or more persons, mounted upon a chassis with wheels and capable of being moved from place to place under its own power. Motor homes generally contain sanitary, water, and electrical facilities.

4. *Folding tent trailer:* A folding structure, mounted on wheels and designed for travel and vacation use.
5. *Boats and boat trailers:* Boats and boat trailers shall include boats, floats, rafts, canoes, plus the normal equipment to transport them on the highway.
6. *Other recreational equipment:* Other recreational equipment includes snowmobiles, all-terrain or special terrain vehicles, utility trailers, plus normal equipment to transport them on the highway.

Regional shopping center: A group of commercial establishments, planned and developed as a unit, with a minimum gross leasable area of 400,000 square feet or greater, and with off-street parking provided on the property.

Restaurant, carry-out: Any establishment whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state, and whose design or method of operation includes both of the following characteristics:

1. Foods, frozen desserts or beverages are usually served in edible containers, or in paper, plastic or other disposable containers; [and]
2. The consumption of foods, frozen desserts or beverages within the restaurant building, within a motor vehicle parked upon the premises or at other facilities in the premises outside the restaurant building is posted as being prohibited, and such prohibition is strictly enforced by the restaurateur.

Restaurant, drive-in: Any establishment whose principal business is the sale of foods, frozen desserts or beverages to the consumer in a ready-to-consume state, and whose design or method of operation, or any portion of whose business, includes one or both of the following characteristics:

1. Foods, frozen desserts or beverages are served directly to the customer in a motor vehicle either by a carhop or by other means which eliminates the need for the customer to exit the motor vehicle; [or]
2. The consumption of foods, frozen desserts or beverages within a motor vehicle parked upon the premises or at other facilities on the premises outside the restaurant building is allowed, encouraged or permitted.

Restaurant, fast food: Any establishment whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state for consumption either within the restaurant building or for carry out with consumption off the premises, and whose design or principal method of operation includes both the following characteristics:

1. Foods, frozen desserts or beverages are usually served in edible containers, or in paper, plastic or other disposable containers; [or]
2. The consumption of foods, frozen desserts or beverages within a motor vehicle parked upon the premises or at other facilities on the premises outside the restaurant building is posted as being prohibited, and such prohibition is strictly enforced by the restaurateur.

Restaurant, standard: Any establishment whose principal business is the sale of food, frozen desserts or beverages to the customer in a ready-to-consume state, and whose design or principal method of operation includes one or both of the following characteristics:

1. Customers, normally provided with an individual menu, are served their foods, frozen desserts or beverages by a restaurant employee at the same table or counter at which such items are consumed; or
2. A cafeteria-type operation where foods, frozen desserts or beverages generally are consumed within the restaurant building.

Right-of-way: A street, alley or other thoroughfare or easement permanently established for passage of persons or vehicles or placement of public and semipublic utilities and under the legal authority of the agency having jurisdiction over the right-of-way.

Room: For the purpose of determining lot area requirements and density in a multiple-family district, a living room, dining room and bedroom, equal to at least 80 square feet in area. A room shall not include the area in kitchen, sanitary facilities, utility provisions, corridors, hallways, and storage. Plans presented showing one, two, or three bedroom units and including a den, library, or other extra room shall count such extra room as a bedroom for the purpose of computing density.

Rooming unit: A room or group of rooms, from a single habitable unit used for living and sleeping, but not containing kitchen or eating facilities.

Right-of-way house: A right-of-way of houses having at least one sidewall in common with a neighboring dwelling, and usually uniform or nearly uniform plans, fenestration, and architectural treatment.

Rubbish: Rubbish means the miscellaneous waste materials resulting from housekeeping, mercantile enterprises, trades, manufacturing and offices, including other waste matter such as slag, stone, broken concrete, fly ash, ashes, tin cans, glass, etc.

Satellite dish antenna: A device incorporating a reflective surface that is solid, open mesh, or bar configured, and is in the shape of a shallow dish, parabola, cone or horn used to transmit and/or receive television, radio, or other electromagnetic communication signals between terrestrially and/or extraterrestrial[ly] based sources. This definition includes, but is not limited to, what are commonly referred to as satellite earth stations, television reception only satellite antennas (TVRO), and satellite microwave antennas.

School, charter (public school academy): A public school and a school district, subject to the leadership and general supervision of the state board over all public education. A charter school or public school academy is authorized by the executive action of an authorizing body, which may be the board of a school district, an intermediate school board, or the board of a community college or a state public university. A charter school shall not be organized by a church or other religious organization.

School, home: A school which enables a child to be educated at the child's home by his parent or legal guardian in an organized educational program in the subject areas of reading, spelling, mathematics, science, history, civics, literature, writing and English grammar. The home school family may choose whether to operate as a nonpublic school. If a home school family chooses to operate as a nonpublic school, it must register with the Michigan Department of Education.

School, nonpublic: A nonpublic school is any school other than a public school giving instruction to children below the age of 16 years and not under the exclusive supervision and control of the officials having charge of the public schools of the state. Nonpublic schools include private, denominational, and parochial schools.

School, nursery: An establishment wherein three or more children, not related by bonds of consanguinity or fostership to the family living on the premises, are, for remuneration, cared for. Such schools or centers need not have a resident family on the premises. (See "childcare center/daycare center.")

School, public: A public elementary or secondary educational entity or agency that has as its primary mission the teaching and learning of academic and vocational-technical skills and knowledge, and is operated by a school district, local act school district, special act school district, intermediate school district, public school academy corporation, public state university, or by the department or state board.

Screen, obscuring: A visual barrier between adjacent areas or uses consisting of structures, such as a wall or fence, or living plant material.

Separate ownership: Ownership of a parcel of property wherein the owner does not own adjoining vacant property. Ownership of property may include dual or multiple ownership by a partnership, corporation or other group; provided that any number of contiguous lots of record may be considered as a single lot of record, for the purpose of this zoning ordinance, as the owner thereof so elects, and in such case the outside perimeter of such group of lots of record shall constitute the front, rear and side lot lines thereof.

Service drive: A drive which generally parallels the public right-of-way but runs along the back of a land use which fronts on the public street. A service drive may provide access to properties on both sides, and vary in width and design.

Setback: The distance required to meet minimum front, side or rear yard setback provisions of this ordinance.

Setback, parking lot: The minimum horizontal distance between the street right-of-way or property line and the near edge of a parking lot, excluding necessary and/or approved driveways, frontage roads and landscaping areas.

Sexually-oriented businesses: See "adult regulated uses."

Sign: Any fabricated sign or outdoor display structure, including its structure, consisting of any letter, figure, character, mark, point, plane, marquee sign, design, poster, pictorial, picture, stroke, stripe, line, trademark, reading matter or illuminating device, which sign is constructed, attached, erected, fastened or manufactured in any manner whatsoever so that the same is used for the attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever, and which is displayed in any manner out of doors for recognized advertising purposes.

Snowmobile: Any motorized vehicle designed for travel primarily on snow or ice, steered by means of wheels, skis or runners.

Stable, private: A stable for the keeping of horses for the use of the residents of the principal use and shall not include the keeping of horses for others, or for commercial boarding, and with a capacity for not more than two horses; provided, however, that the capacity of a private stable may be increased if the lot whereon such stable is located contains at least one acre of land for each additional horse stabled thereon.

Stable, public: A stable other than a private stable, with a capacity for more than two horses, and carried on within an unplatted tract of land of not less than ten acres.

State-licensed residential facility: A structure constructed for residential purposes that is licensed by the state pursuant to Act 218 of the Public Acts of 1979, as amended (MCLA 400.701 et seq.), or Act 116 of the Public Acts of 1973, as amended (MCLA 722.111 et seq.), which facility provides resident services and 24-hour supervision or care for six or fewer persons in need of supervision or care.

Steep slopes: Slopes with a grade of 12 percent or more.

Street, frontage: A public or private drive, which generally parallels a public street between the right-of-way and the front building setback line. Frontage roads can be one-way or bidirectional in design. The frontage road provides specific access points to private properties while maintaining separation between the arterial street and adjacent land uses. A road, which allows parking or is used as a maneuvering aisle within a parking area is not considered a frontage road.

Street, arterial: A street defined in the comprehensive plan as "major traffic routes" and/or as an arterial or major street by the Michigan Department of Transportation where the movement of through traffic is the primary function, with service to adjacent land uses a secondary function.

Store, hypermarket: A retail store with more than 100,000 square feet of gross floor area offering groceries, meats, poultry, seafood, dairy products, produce, bakery products, other food products, and other associated merchandise, and may have facilities for a butcher shop, fresh seafood, a delicatessen, a bakery, a restaurant, an ice cream parlor, a florist, a pharmacy, a

financial institution, or other services, and includes departments for various hardline merchandise (such as hardware, lumber and building supplies, automobile parts and supplies, paint, floor coverings, furniture, home improvement supplies, sporting goods, toys, housewares, cookware, pets and pet supplies, gardening supplies, appliances, jewelry, etc.) and softline merchandise (such as clothing, shoes, cosmetics, health supplies, personal hygiene products, books and magazines, stationery and office supplies, greeting cards and gifts, infant and toddler materials, fabric and sewing supplies, household decorations, etc.), and may have facilities for an outdoor garden center, an automotive repair center, an automotive fueling station, or a party store.

Store, supermarket: A retail store with more than 20,000 square feet of gross floor area offering groceries, meats, poultry, seafood, dairy products, produce, bakery products, other food products, and other associated merchandise, and may have facilities for a butcher shop, fresh seafood, a delicatessen, a bakery, a party store, a restaurant, an ice cream parlor, a florist, a pharmacy, a financial institution, or other services.

Store, open front: A business establishment so developed that service to the patron may be extended beyond the walls of the structure not requiring the patron to enter the structure. The term "open front store" shall not include automobile repair stations or automobile service stations.

Store, retail: Any building or structure in which goods, wares, or merchandise are sold to the consumer for direct consumption and not for resale.

Story: A portion of a building, other than a mezzanine, included between the surface of a floor and the upper surface of the floor next above, or if there is no floor above, then the space between the floor and the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

Story, half: A part of a building between a pitched roof and the uppermost full story, such part having a floor area which does not exceed one-half of the floor area of such full story; provided the area contains at least 200 square feet, with a clear height of at least seven feet six inches.

Street: A public or private way established or dedicated by duly recorded plat, deed, grant, governmental authority or by operation of law.

Street line (right-of-way line): The dividing line between the street and a lot.

Structure: Any constructed or erected material or combination of materials in or upon the ground, including, but not limited to, buildings, mobile homes, aboveground swimming pools, radio towers, sheds, signs and storage bins, but excluding sidewalks and paving on streets, driveways, parking areas and patios.

Subdivision: A subdivision as defined in the City of Boyne City Subdivision Control Ordinance.

Substantial improvement: Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred.

For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code

specifications which are solely necessary to ensure safe living conditions; or

2. Any alteration of a structure listed on the national register of historic places or a state inventory of historic places.

Telecommunication towers and facilities or tower: All structures and accessory facilities, including alternative tower structures, relating to the use of the radio frequency spectrum for the purpose of transmitting or receiving radio signals; including, but not limited to, radio towers, television towers, telephone devices and exchanges, microwave relay facilities, telephone transmission equipment buildings, private and commercial mobile radio service facilities, personal communication services towers (PCS), and cellular telephone towers. Not included in this definition are: citizen band radio facilities; shortwave receiving facilities; radio and television broadcast reception facilities; satellite dishes; federally licensed amateur (HAM) radio facilities; and governmental facilities which are subject to state or federal law or regulations which preempt municipal regulatory authority.

Temporary use or building: A use or zoning permitted to exist during periods of construction of the main building or use, or for special events.

Temporary uses, seasonal events: Seasonal outdoor events intended for a limited duration within any zoning district where such use shall not be interpreted to be a continuance of a nonconforming use. Temporary uses and seasonal sales events may include carnivals, circuses, farmers market, art fairs, craft shows, sidewalk sales, antique sales, Christmas tree sales, flower sales, flea markets and similar events.

Tent: A shelter of canvas or the like supported by poles and fastened by cords or pegs driven into the ground, and shall not include those types of tents used solely for children's recreational purposes.

Tent, folding trailer: A folding structure of canvas or other material mounted on wheels and designed for travel and vacation use.

Terrace home: One of a right-of-way of houses situated on or near the top of a slope.

Thoroughfare, major: An arterial street which is intended to serve as a large volume traffic way for both the immediate city area and the region beyond, and may be designated as a major thoroughfare, parkway, freeway, expressway, or equivalent term.

Thoroughfare, secondary: An arterial street which is intended to serve as a traffic way serving primarily the immediate city area and serving to connect with major thoroughfares.

Tourist home or bed and breakfast inn or home: Any dwelling in which overnight accommodations are provided or offered for transient guests for compensation, including provision for a morning meal only for the overnight guest. A bed and breakfast is distinguished from a motel in that a bed and breakfast establishment shall have only one set of kitchen facilities, employ only those living in the house or up to one additional employee, and have a facade style consistent with the surrounding homes.

Townhouses: A residential structure, or group of structures, each of which contains three or more attached single-family dwelling units with individual rear yards and or front yards designed as an integral part of each single family dwelling unit.

Travel trailer: A portable nonmotorized vehicular unit primarily designed for travel and/or recreational usage, also containing facilities for overnight lodging. Travel trailer includes "fifth wheels," but not mobile homes. A vehicle designed as a travel unit for occupancy as a temporary or seasonal living unit and not exceeding 200 square feet in area.

Truck storage: An area used for the temporary storage of private trucks or trucks for hire.

Truck terminal: A structure to which goods, except raw or unprocessed agricultural products, natural minerals, or other resources, are delivered for immediate distribution to other parts of the city or to be amalgamated for delivery in larger units to other points in the metropolitan area; or for distribution or amalgamation involving transfer to other modes of transportation.

Use: The purpose for which land or premises, or a building thereon, is designed, arranged or intended, or for which it is occupied, maintained, let, or leased.

Use, accessory: A use naturally and normally incidental to, subordinate to and devoted exclusively to the main use of the premises.

Use, commercial: The use of property in connection with the purchase, sale, barter, display or exchange of goods, wares, merchandise or personal services; the maintenance of offices or recreational or amusement enterprises; or garage or basement sales conducted on residential premises for more than six calendar days during one year.

Use, conditional: A use of land, which is permitted within a particular zoning district only if the applicable standards have been met and a site plan has been approved.

Use, industrial: Any land or building occupied or used for manufacturing or processing purposes.

Use, illegal nonconforming: An existing use of land and structures, on the effective date of this ordinance, considered a nuisance, damaging to abutting property or hazardous to persons. Such use shall be discontinued and abated.

Use, legal nonconforming: An existing use of land and/or structures on the effective date of this ordinance, which use does not conform to the uses specified as permitted in a district, but which is not construed by this ordinance to be a nuisance, damaging to abutting property or hazardous to persons.

Use, principal: The main use to which the premises are devoted and the principal purpose for which the premises exist.

Use, principal permitted: A use permitted in each zoning district by right subject to development plan review approval.

Use, public and semipublic institutional: Uses of governmental agencies and nonprofit organizations including, but not limited to, office buildings, churches, municipal parking lots, post offices, libraries, and community centers.

Utility, public: Any person, firm, corporation, municipal department or board duly authorized to furnish and furnishing, under municipal or state regulations, to the public, transportation, water, gas, electricity, telephone, steam, telegraph or sewage disposal services.

Utility room: A room in a dwelling, not located in the basement, the use of which is primarily for storage, for housing a heating unit or for laundry purposes.

Variance: A modification of the literal provisions of the ordinance granted when strict enforcement of the ordinance would cause undue hardship owing to circumstances unique to the individual property on which the variance is granted. The characteristics of a variance are:

1. Undue hardship;
2. Unique circumstances; and
3. Peculiar to the specific property involved.

A variance is not justified unless all three elements are present in the case.

Vehicle, commercial: Any one of a class of vehicles and similar vehicles whose characteristics are described below which have or require commercial license plates and have a gross vehicle weight in excess of 6,500 pounds. Any commercially licensed vehicle, which does not possess the characteristics of a commercial vehicle, as defined below, shall not be subject to the restrictions applying to commercial vehicles.

1. *Semitrailer:* A trailer unit which is customarily attached to and propelled by a truck tractor vehicle, but which can be to stand alone. Semitrailer shall include trailers with flat beds, stake beds, roll-off beds, tanker bodies, dump bodies partial box-type enclosures, any of which above units exceeds 12 feet in height.
2. *Truck tractor:* A commercial vehicle which is capable of attaching to and propelling semitrailers, mobile homes, modular homes, boat trailers and similar units, and which is not customarily operated without an attached trailer.
3. *Other commercial vehicles:* Any truck or motor vehicle with a cab and chassis with a stake, rack, dump body, wrecker body, tanker body or any other body, the mounted height of which exceeds the height of the cab roof by more than eight inches. This shall include any vehicle which has a commercial license plate and which is designed to accommodate a body length in excess of nine feet. Commercial vehicles do not include motor homes or recreational vehicles, but does include construction equipment such as backhoes, power shovels, bulldozers, earth moving equipment and similar vehicles.

Veterinary clinic or hospital: An office of a duly licensed veterinary professional where diagnosis, treatment, surgery and other veterinary care for domestic animals, horses and livestock, and all other activities and rooming of animals are conducted within a completely enclosed building. A veterinary hospital may include outdoor boarding incidental to treatment.

Wall, obscuring: An obscuring structure of definite height and location constructed of wood, masonry, concrete or similar material.

Wall, parapet: An extension of a building wall above the roof, which may serve to screen roof-mounted mechanical equipment.

Wall, retaining: A permanent solid barrier of brick, stone, or other opaque material intended to enclose an area. For the purpose of this ordinance, all supporting members, posts, stringers, braces, pilasters or other construction features of a retaining wall shall be located and placed on the inside of the wall away from public view. Moreover, all retaining walls shall be constructed and/or painted, tinted or colored in one color only for their exterior surface, and no sign or advertising shall be placed, affixed, painted or designed thereon.

Warehouse, miniature or self-storage: A building or group of buildings in a controlled-access and fenced compound that contains varying sizes

of individual, compartmentalized, and controlled-access stalls or lockers for the storage of customer's goods or wares.

Waste receptacle station: Any exterior space, which is not a principal use for containers, structures, or other receptacles intended for temporary storage of solid waste materials.

Watercraft: A vehicle designed for movement on the surface of water propelled by oars, sails, paddles, or one or more internal combustion engines.

Wetland: Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support wetland vegetation or aquatic life and is commonly referred to as a bog, swamp, or marsh.

Wetland, regulated: Certain wetlands regulated by the Michigan Department of Environmental Quality under the provisions of Act 203 of the Public Acts of 1979 [MCL 324.30301 et seq.], as amended, and generally defined as land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support wetland vegetation or aquatic life and is commonly referred to as a bog, swamp, or marsh and which is any of the following:

1. Contiguous to an inland lake or pond, or a river or stream;
2. Not contiguous to an inland lake, pond, river or stream, and more than five acres in size;

3. Not contiguous to an inland lake or pond, or a river or stream; and five acres or less in size if the Michigan Department of Natural Resources determines that protection of the area is essential to the preservation of the natural resources of the area from pollution, impairment, or destruction and the department has so notified the property owner.

Wine shop (specialty): A retail establishment licensed by the State of Michigan where more than ten percent of the gross floor area is utilized for the storage, display, and sale of wine or beer with an alcohol content under 21 percent by volume for consumption off the premises; however no more than ten percent of the gross floor area shall be dedicated for the storage, display, and sale of beer.

Wireless communication facilities: All structures and accessory facilities relating to the use of the radio frequency spectrum for the purpose of transmitting or receiving radio signals. This may include, but shall not be limited to, radio towers, television towers, telephone devices and exchanges, microwave relay towers, telephone transmission equipment building and commercial mobile radio service facilities. Not included within this definition are: citizen band radio facilities; shortwave facilities; ham, amateur radio facilities; satellite dishes; and, governmental facilities which are subject to state or federal law or regulations which preempt municipal regulatory authority.

1. *Attached wireless communications facilities (antennae):* Wireless communication facilities that are affixed to existing structures, such as existing buildings, towers, water tanks, utility poles, and the like. A wireless communication support structure proposed to be newly established shall not be included within this definition.
2. *Co-location:* The location by two or more wireless communication providers of wireless communication facilities on a common structure, tower, or building, with the view toward reducing the overall number of structures required to support wireless communication antennae within the city.
3. *Wireless communication support structures (towers):* Structures erected or modified to support wireless communication antennae. Support structures within this definition include, but shall not be limited to, monopoles, lattice towers, light poles, wood poles and guyed towers, or other structures which appear to be something other than a mere support structure.

Wood lot: An area of one-fourth acre or more containing eight or more trees per one-fourth acre, such trees having a four inches or greater diameter at a four-foot height.

Yards: The space on the same lot with a main building, open, unoccupied, and unobstructed from the ground upward, except as otherwise provided in this ordinance and as defined herein:

- A. *Front yard:* That yard extending the full width of the lot, the depth of which is the least distance between the street right-of-way line and the building line.
- B. *Rear yard:* That yard extending the full width of the lot, the depth of which is the least distance between the rear lot line and the rear of the main building.
- C. *Side yard:* That yard between a main building and the side lot line extending from the front yard to the rear yard. The width of the required side yard is measured horizontally at 90-degree angles with the side lot line, from the nearest point of the side lot line to the dripline of the structure.
- D. *Waterfront yard:* That yard which has frontage on the water; waterfront yards shall be considered front yards and subject to all pertinent regulations.

Zoning permit: The written authority issued by the planning director or zoning administrator permitting the construction, removal, moving, alteration or use of a building in conformity with this ordinance.

(Ord. of 3-26-2002, § 2; Ord. of 9-8-2009; Ord. of 4-10-2018; Ord. of 1-14-2020, § 1)

Sec. 2.10. - Zoning districts.

For the purpose of this ordinance, the City of Boyne City is hereby divided into the following districts:

Article III	Rural estate district (RED)
Article IV	Traditional residential district (TRD)
Article V	Waterfront residential district (WRD)
Article VI	Multiple family residential district (MFRD)
Article VII	Manufactured housing park district (MHPD)
Article VIII	Professional office district (POD)
Article IX	Waterfront marina district (WMD)
Article X	Central business district (CBD)
Article XI	Transitional commercial district (TCD)
Article XII	General commercial district (GCD)
Article XIII	Regional commercial/industrial district (RC/ID)
Article XIV	Planned industrial district (PID)

Article XV	Community service district (CSD)
Article XVI	Flood hazard district (FHD)

Sec. 2.20. - Zoning map.

The boundaries of the zoning districts are hereby established as shown on the zoning map, City of Boyne City, Michigan, which is hereby made an integral part of this ordinance. All references, notations and information shown thereon shall be as much a part of this ordinance as if fully described herein.

Sec. 2.30. - Boundaries of the district.

The boundaries of zoning districts, as shown on the zoning map, unless otherwise shown by dimensions from street lines or other designated line, follow the centerline of the streets or alleys or lot lines, and such lines extended and the corporate limits of the city as they exist at the time of adoption of this ordinance.

Where a district boundary line, as established in the above paragraph or as shown on the zoning map, divides a lot which was in a single ownership and of record at the time of enactment of this ordinance, district boundary line shall be fixed from the scale of the zoning map. The use authorized thereon and the other district requirements applying to the most restricted portion of such lot shall be considered as extending to the entire lot. The use so extended shall be deemed to be conforming.

All street and alley rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone as the property immediately abutting upon such street and alley rights-of-way. Where the centerline of a street or alley serves as a district boundary, the zoning of such street or alley, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such centerline.

Questions concerning the exact location of district boundary lines shall be determined by the board of appeals after recommendation from the planning commission.

Sec. 2.40. - Amendment procedures.

- A. Amendments or supplements to this zoning ordinance may be made from time to time in the manner provided by law.

The regulations and provisions stated in the text of this ordinance and the boundaries of zoning districts shown on the zoning map may be amended, supplemented or changed by ordinance of the city commission.

Proposals for amendments, supplements or changes may be initiated by the city commission on its own motion, by the planning commission, or by petition of a property owner or their designated representative.

The procedure to be followed for initiating and processing an amendment shall be as follows:

1. Each petition by one or more persons for an amendment shall be submitted by application to the planning director on a standard form provided;
2. The planning commission shall conduct at least one public hearing, notice of the time, date and place of which

shall be given by publication in the official newspaper at least 15 days before the date of such hearing. In addition, all persons who own real property or are occupants of structures within 300 feet of the property to be rezoned shall be notified of the hearing by personal delivery or the mail. If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than one occupant of a structure, except that if a structure contains more than one dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses or organization, one occupant of each unit or spatial area shall receive notice. In the case of a structure containing more than four dwelling units or other distinct spatial areas owned or leased by different individuals or businesses, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure. The notice shall be given at least five and not more than 15 days before the application will be considered. Notice of such public hearing shall also be given by mail to each public utility and/or railroad within the districts or zones affected;

3. The planning commission shall review each proposal in terms of particular factors related to the individual proposal and in terms of the most likely effect on the community's physical development. Following review, the planning commission shall submit their recommendation to the city commission. The city commission will act upon the request by granting approval, disapproval, or referral back to the planning commission for additional study; [and]
4. Upon presentation of a protest petition meeting the requirements of this subsection, an amendment to a zoning ordinance which is the object of the petition shall be passed only by a two-thirds vote of the legislative body. The protest petition shall be presented to the legislative body before final legislative action on the amendment and shall be signed by one of the following:
 - a. The owners of a least 20 percent of the area of land included in the proposed change; [or]
 - b. The owners of at least 20 percent 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.
- B. No application for commission approval which has been wholly or in part denied shall be resubmitted until the expiration of one year or more from the date of denial, except on the grounds of newly discovered evidence or proof of changed conditions found to be sufficient to justify reconsideration by the planning commission.

Sec. 2.50. - Amendment criteria.

- A. For amendment requests to add uses to a zoning district, the planning commission and city commission shall use the following as a guide:
 1. The proposed use is not already provided for elsewhere in the ordinance;
 2. The proposed use is compatible with uses already permitted in that district;
 3. The proposed use relates well with the city's comprehensive plan;
 4. The proposed use relates well with the spirit and intent of this ordinance, and with the objectives of the zoning district;
 5. The proposed use is properly located in the district;
 6. The proposed use is most appropriate in the district if permitted by special conditional land use permits; [and]
 7. There is a need to add the proposed use.
- B. For amendment requests to change or to add additional regulations or standards to a district or a use, the planning commission and city commission shall use the following as a guide:
 1. The proposed rule, change or addition helps to reinforce the comprehensive plan;

2. The proposed rule, change or addition is in keeping within the spirit and intent of the this ordinance, and with the objectives of the zoning district;
 3. The problem or issue which the change is intended to address cannot be accomplished in another, more appropriate fashion;
 4. The proposed amendment would correct an error in the ordinance;
 5. The proposed amendment would clarify the intent of the ordinance;
 6. Documentation has been provided indicating problems and conflicts in implementation or interpretation of specific sections of this ordinance;
 7. The proposed amendment would address changes to county, state or federal legislation;
 8. The proposed amendment would address potential legal issues or administrative problems with this ordinance based on recent case law or opinions rendered by the attorney general of the State of Michigan;
 9. The proposed amendment would promote compliance with changes in other city ordinances and/or county, state, or federal regulations;
 10. The proposed amendment is supported by the findings of reports, studies, or other documentation on functional requirements, contemporary building practices, environmental requirements and similar technical items; [and]
 11. Other criteria as determined by the planning commission or city commission which would protect the health, safety, and welfare of the public, protect public and private investment in the city, promote implementation of the goals and policies of the comprehensive plan, and enhance the overall quality of life in the city.
- C. For amendment requests to change, create, extend or reduce a mapped zoning district, the planning commission and city commission shall use the following as a guide:
1. The proposed zoning district is more appropriate than any other zoning district, or more appropriate than adding the desired use as a conditional land use in the existing zoning district;
 2. The property cannot be reasonably used as zoned, and the applicant cannot receive a reasonable return on investment through developing the property with one of the uses permitted under current zoning at the time of purchase or at the time of securing legal control of the property;
 3. The proposed zone change is supported by and consistent with the goals, policies and future land use map of the adopted city comprehensive plan, including any sub-area or corridor studies. If conditions have changed since the comprehensive plan was adopted, as determined by the planning commission, the consistency with recent development trends in the area shall be considered;
 4. The proposed zone change is compatible with the established land use pattern, surrounding uses, and surrounding zoning in terms of land suitability, impacts on the environment, density, nature of use, traffic impacts, aesthetics, infrastructure and potential influence on property values, and is consistent with the needs of the community;
 5. All the potential uses allowed in the proposed zoning district are compatible with the site's physical, geological, hydrological and other environmental features;
 6. The change would not severely impact traffic, public facilities, utilities, and the natural characteristics of the area, or significantly change population density, and would not compromise the health, safety, and welfare of the city. The planning commission may require a general impact assessment in accordance with the requirements of this ordinance if it determines the proposed zoning change could have a negative impact upon traffic, public facilities, utilities, natural characteristics, populations density, or other concerns. A traffic impact study in accordance with

the requirements of this ordinance shall be required if the proposed rezoning district permits uses that could generate 100 or more directional trips during the peak hour, or at least 1,000 trips per day more than the majority of the uses that could be developed under current zoning;

7. The rezoning would constitute and create an isolated and unplanned "spot zone" granting a special privilege to one landowner not available to others;
 8. The change of present district boundaries is consistent in relation to existing uses, and construction on the site will be able to meet the dimensional regulations for the proposed zoning district listed in the schedule of regulations;
 9. There has been a change of conditions in the area supporting the proposed rezoning.
 10. Adequate sites are neither properly zoned nor available elsewhere to accommodate the proposed uses permitted in the requested zoning district;
 11. There was a mistake in the original zoning classification; [and]
 12. The request has not previously been submitted within the past one year, unless conditions have changed or new information has been provided.
- D. Any amendment for the purpose of conforming to a decree of a court of competent jurisdiction shall be adopted by the city commission and published, without necessity of a public hearing or referral thereof to any other board or agency.

Sec. 2.60. - Principal permitted uses in districts.

Within each zoning district there are uses which when developed in accordance with sound planning and site plan principles are consistent with the purpose and objectives of the district. For the purpose of this ordinance these uses shall be known as principal permitted uses as set forth in the individual district and shall be allowed within that particular district subject to the development requirements for the district.

Sec. 2.70. - Conditional uses in districts.

- A. *Purpose and intent.* Within each zoning district it is recognized that there are uses, because of their unique characteristics which cannot be properly classified in any particular district or districts without consideration in each case of the impact of such uses upon neighboring land, and of the public need for the particular use at the particular location. Such uses may be consistent with the purpose and objectives of the particular zoning district only in specific locations, under specific conditions and when developed in accordance with sound planning and site plan principals. The intent of this section is to provide regulations for uses which are essentially compatible with principal permitted uses in a given district, but which, by reason of the special nature of such uses or their particular location in relation to neighboring properties, require a stricter level of review by the city. Accordingly, conditional uses should not be permitted without consideration of relevant restrictions or conditions being imposed which address their unique characteristics.
- B. *Authorization.* The conditional use approval of specific land uses and activities, as required under this ordinance, all titled conditional uses, may be authorized by the planning commission; provided that no application for conditional use approval shall be acted upon until after a public hearing is held in accordance with Act 207 of the Public Acts of 1921, as amended. The planning commission shall take final action on all conditional uses.
- C. *Applications.* An application for conditional use approval for a land use shall be filed and processed in the manner prescribed for an application for development plan review in article XIX of this ordinance, and shall be accompanied by the payment of a fee as established by resolution of the city commission. Any application for conditional use

approval shall be filed simultaneously with an application for development plan review for the subject use.

D. *Public hearing and notice of request.* The planning commission shall review and take action on applications for conditional use approval following the procedures set forth in section 2.40 of this ordinance for processing a zoning amendment application, including requirements for a public hearing and notice of the public hearing. The notice shall:

1. Describe the nature of the conditional use request;
2. Indicate the property, which is the subject of the conditional use request;
3. State when and where the conditional use request will be considered; and
4. Indicate when and where written comments will be received concerning the request.

[E.] *Standards of approval.* For the purpose of this ordinance these uses shall be known as conditional uses as set forth in the individual district and shall be allowed within that particular district subject to the development requirements for the district; provided the planning commission finds the conditional use affirmatively meets the following criteria deemed applicable in each case:

1. The conditional use will promote the use of land in a socially and economically desirable manner for persons who will use the proposed land use or activity, for landowners and residents who are adjacent thereto and for the city as a whole;
2. The conditional use is compatible and in accordance with the goals, objectives and policies of the city's comprehensive plan;
3. The conditional use is necessary for the public convenience at that location;
4. The conditional use is compatible with adjacent uses of land, and can be constructed, operated and maintained so as to continue to be compatible with the existing or intended character of the general vicinity and so as not to change the essential character of the area in which it is proposed;
5. The conditional use shall be of such location, size and character, that it will be in harmony with the appropriate and orderly development of the district in which it is situated and will not be detrimental to the orderly development of adjacent districts;
6. The conditional use is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
7. The conditional use can be adequately served by public services and facilities without diminishing or adversely affecting public services and facilities to existing land uses in the area;
8. The conditional use will not cause injury to the value of other property in the neighborhood in which it is to be located;
9. The location and use and assembly of persons in connection with the proposed conditional use will not be hazardous to the district in which the use is located, hazardous to a specific use or life and property within the district, or be incongruous therewith or in conflict with the normal traffic of the district;
10. The conditional use will protect the natural environment, help conserve natural resources and energy, and will not involve uses, activities, processes, materials and equipment or conditions of operation that will be detrimental to the natural environment, public health, safety or welfare by reason of excessive production of traffic, noise, smoke, odors or other such nuisance;
11. The vehicular circulation for the proposed conditional use will be in the best interest of the public health, safety and welfare in relationship to egress/ingress to the site, vehicular turning movements related to street intersections and street gradient, site distance and potential hazards to the normal flow of traffic; and

12. The conditional use is within the provisions of uses requiring conditional use approval as set forth in the various zoning districts herein, is in harmony with the purposes and conforms to the applicable regulations of the zoning district in to be located, and the proposed site layout is in compliance with the general standards of article XIX, regarding site development and shall insure that:

- a. The use and associated activities on the property are so located as not to hinder the projected development of the adjacent properties or impair the existing uses of adjacent lands. This shall include all uses associated with the particular use such as parking, lighting, display signs, etc.; [and]
- b. Sufficient landscaping, fencing, walls and other means of buffering are provided to insure that operation of the use will not be objectionable to nearby uses or dwellings by reason of noise, fumes or flash of lights nor interfere with an adequate supply of light and air, nor increase the danger of fire or otherwise create the potential of endangering the public safety.

No conditional use approval shall be granted by the planning commission unless it finds the conditional use affirmatively meets the criteria listed herein which are deemed applicable in each case;

- F. *Conditions of approval.* The planning commission may impose such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights on nearby parcels, and for insuring that the purposes of this ordinance and the general spirit and purpose of the district in which the special use is proposed will be observed. Conditional use approvals may be granted for a specific time period as determined by the planning commission;
- G. *Approval.* The planning commission may deny, approve or approve with conditions any request for conditional use approval of a land use. The decision on a conditional use approval shall be incorporated in a findings of fact relative to the specific land use under consideration. The decision shall specify the basis for the decision and any conditions imposed.
 1. Prior to granting any conditional use approval, the planning commission may impose any additional conditions or limitations as, in its judgment, may be necessary for protection of the public interest. Such conditions shall be related to and ensure that the review considerations and applicable regulations of this ordinance are met.
 2. Approval of a conditional use, including conditions made as part of the approval, is attached to the property described as part of the application and not to the owner of such property.
 3. A record of the decision or recommendation of the planning commission, the reasons for the decision reached and any conditions attached to such decision shall be kept and made a part of the minutes of the planning commission.
 4. The planning director shall make periodic investigations of developments authorized by conditional use approval to determine continued compliance with all requirements imposed by the planning commission. Noncompliance with the requirements and conditions approved for the conditional use shall constitute grounds for the planning commission to terminate the approval following a public hearing. Such hearing shall be held in accordance with the procedures used for the original hearing as required by this ordinance.
- H. *Records.* The conditions imposed with respect to the conditional use approval of a land use or activity shall be recorded in the record of the conditional use approval action and shall remain unchanged except upon the mutual consent of the planning commission and the landowner. The planning commission shall maintain a record of changes granted with conditions.

Sec. 3.10. - Purpose.

The purpose of this residential district is to provide a pleasant and attractive living environment which is consistent with the existing development, respects the unique natural environment, and is compatible with the land needs of on-site wells and septic systems. The intended character and nature of this district is a rural estate without municipal water and sanitary sewer service, with lot sizes of sufficient size as to not require such service. The rural estate district (RED) is intended to be a setting for a predominance of low-density and large-lot housing, typically in transitional locations between more intense urban development and rural or open lands.

Sec. 3.20. - Principal permitted uses.

No building or land shall be used and no building shall be erected except for one or more of the following specified uses, unless otherwise provided in this ordinance:

- A. Single-family detached dwellings;
- B. Municipal parks, playgrounds, and recreation centers;
- C. Residential cluster housing developments, i.e., houses on smaller building sites but consistent with overall parcel density limits;
- D. Agriculture uses on five acres or more in area;
- E. Home occupations in which customers or patrons do not visit the site for the delivery of goods and/or services;
- F. Adult foster care family homes; provided, this subsection shall not apply to adult foster care facilities, licensed by a state agency, for the care and treatment of persons released from or assigned to adult correctional institutions;
- G. Family daycare homes; [and]
- H. Accessory structures and uses customarily incidental to the above permitted uses.
- I. The keeping of four hens per parcel provided that:
 - 1. No person shall keep any rooster.
 - 2. No person shall slaughter or dress chickens outdoors.
 - 3. Chickens shall be provided with a covered enclosure and/or a fenced enclosure in the rear yard.
 - 4. All covered enclosures shall be kept a minimum of ten feet from the rear and side lot line.
 - 5. Covered enclosures shall be so constructed or repaired as to prevent rats, mice, or other rodents from being harbored underneath, within, or within the walls of the enclosure.
 - 6. All feed and other items associated with the keeping of chickens are to be stored as to not attract rodents.
 - 7. Hens and their enclosures must be kept in a neat, clean, and sanitary condition from offensive odors, excessive noise, or other condition that would constitute a nuisance.
- J. Group day care home shall have a fenced outdoor play area of at least 1,200 square feet located behind the front building line of the home.

(Ord. of 5-8-2012; Ord. of 2-28-2017)

Sec. 3.30. - Conditional uses.

The following uses shall be considered conditional and shall require conditional use approval, and shall comply with any applicable conditional use requirements of article XXV:

- A. Private recreation areas, uses and facilities including country clubs, marinas, golf courses and swimming pools

subject to the following [provisions]:

1. No building shall be located within 100 feet of a dwelling;
 2. Facilities such as licensed restaurants and bars may be permitted when occupying an integral part of the main structure, provided there is no exterior display or advertising of said facilities;
 3. Golf fairways, swimming pools, tennis courts, boat docks, and similar uses shall be located not less than 35 feet from any property line; [and]
 4. Access shall be directly from and onto a major thoroughfare or regional arterial, and not through a residential neighborhood.
- B. Public utility transformer stations, substations and gas regulator stations without service or storage yards shall comply with the requirements of this ordinance and shall be subject to the following: a front yard setback of not less than 50 feet shall be provided (irrespective of the yard requirement of the district in which it is located) and two side yards and a rear yard shall be provided, each shall not be less than 25 feet in width. The previously mentioned conditional uses shall be landscaped with a buffer of plant materials that effectively screens the view of the use from property used for residences, public walkways and rights-of-way. The standard buffer shall consist of a landscaped strip at least six feet wide outside the perimeter of the compound. The buffer shall contain a variety of species of plants.
- C. Cemeteries; provided that no buildings or structures shall be located nearer than 200 feet to the boundary line of any adjacent parcel, and that access shall be directly from and onto a major thoroughfare or regional arterial, and not through a residential neighborhood.
- D. Churches, synagogues and temples.
- E. Home occupations in which customers or patrons visit the site for the delivery of goods and/or services.
- F. Plant nurseries and greenhouses.
- G. The raising and keeping of fowl, cows, and/or rabbits on areas of five acres or less for owner's use and consumption only, with a maximum of 100 animal units.
- H. Private stables for the keeping of horses and ponies for private use.
- I. One roadside stand solely for the sale of produce grown on the land used for agricultural purposes; provided adequate vehicular access and off-street parking is provided as determined by the planning commission.
- J. The raising of fur bearing animals, animals for medical experimentation, dog kennels, veterinary clinics and riding stables, excluding concentrated animal feeding operations (CAFO's), on an area with a minimum of ten acres but not more than 25 acres in area only, with a maximum of ten animal units.
- K. Funeral homes.

(Ord. of 10-9-2007, § 2)

Sec. 3.40. - Development requirements.

The following requirements shall be met within a rural estate district (RED).

- A. Development plan approval as specified in article XIX of this ordinance, except single-family dwellings and home occupations as a principal permitted use;
- B. Off-street parking, loading, and access management standards for all uses as specified in article XXIV of this ordinance;
- C. Signs for all uses as specified in the Boyne City Sign Ordinance;

- D. Height, area, lot coverage and yard regulations as specified in article XX of this ordinance;
- E. Landscaping requirements as specified in article XXIII of this ordinance;
- F. Design, architectural, and building material standards as specified in article XXII of this ordinance; [and]
- G. Provisions relating to all zoning districts (as applicable in each separate case) as specified in article XXI of this ordinance.
- H. Dwellings must be firmly and permanently attached to a solid concrete block, poured-in-place concrete, or stone foundation, or a foundation of other suitable materials, set upon concrete footings, below frost level. Foundation shall completely extend from the structure to footings and enclose the entire perimeter of the structure. Foundation and footings shall be constructed in accordance with the all applicable building code and all state regulations. No dwelling shall have exposed wheels, towing mechanism, or undercarriage. All dwellings shall have overhangs of not less than one foot as measured horizontally from the side of the structure to the outside edge of the eave and gable end.

(Ord. of 4-10-2018)

ARTICLE IV. - TRADITIONAL RESIDENTIAL DISTRICT (TRD)

Sec. 4.10. - Purpose.

The purpose of this district is to provide a pleasant and attractive residential living environment of a medium density, primarily on previously platted residential lots and served with community water and sanitary sewer facilities, characterized by compact, concentrated development patterns. It is the further intent of this district to provide for such uses as schools, churches, libraries, parks, playgrounds, and other public and semi-public uses, along with certain home occupations and offices, accessory apartments, and others, to coexist on a limited and structured basis along side and with residential uses.

(Ord. of 5-23-2001)

Sec. 4.20. - Principal permitted uses.

No building or land shall be used and no building shall be erected except for one or more of the following specified uses, unless otherwise provided in this ordinance.

- A. Single family detached dwellings.
- B. Attached or detached accessory apartments, provided the site contains an owner occupied single family dwelling, limited to one accessory apartment per site. Accessory apartments can be attached to either a single family dwelling or a detached garage. Detached accessory apartments shall have a minimum side yard and rear yard setback of ten feet. Off-street parking shall be in accordance with D.1.a of this subsection.
- C. Two-family dwellings.
- D. Public, parochial and private schools including nursery schools; churches, temples, and similar places of worship with a maximum capacity of 500 worshipers; libraries; and community buildings.
- E. Municipal parks, playgrounds, and recreation centers.
- F. Adult foster care family homes, provided, this subsection shall not apply to adult foster care facilities, licensed by a state agency, for the care and treatment of persons released from or assigned to adult correctional institutions.
- G. Home occupations in which customers or patrons do not visit the site for the delivery of goods and/or services.

- H. Family day care homes.
 - I. Accessory structures and uses customarily incidental to the above permitted uses.
 - J. The keeping of four hens per parcel provided that:
 - 1. No person shall keep any rooster.
 - 2. No person shall slaughter or dress chickens outdoors.
 - 3. Chickens shall be provided with a covered enclosure and/or a fenced enclosure in the rear yard.
 - 4. All covered enclosures shall be kept a minimum of ten feet from the rear and side lot line.
 - 5. Covered enclosures shall be so constructed or repaired as to prevent rats, mice, or other rodents from being harbored underneath, within, or within the walls of the enclosure.
 - 6. All feed and other items associated with the keeping of chickens are to be stored as to not attract rodents.
 - 7. Hens and their enclosures must be kept in a neat, clean and sanitary condition from offensive odors, excessive noise, or other condition that would constitute a nuisance.
 - K. Group day care home shall have a fenced outdoor play area of at least 1,200 square feet located behind the front building line of the home.

(Ord. of 5-23-2001; Ord. of 5-8-2012; Ord. of 2-28-2017; Ord. of 1-14-2020, § 2)

Sec. 4.30. - Conditional uses.

The following uses shall be considered conditional and shall require conditional use approval, and shall comply with any applicable conditional use requirements of article XXV:

- A. Multiple dwelling with a maximum of four units subject to the following:
 - 1. Lot area must contain a minimum of 2,500 square feet per unit.
 - 2. Units must be compatible with surrounding neighborhood character and architecture.
- B. Private recreation areas, uses and facilities including, marinas, and swimming pools subject to the following:
 - 1. No building shall be located within 100 feet of a dwelling.
 - 2. Facilities such as licensed restaurants and bars may be permitted when occupying an integral part of the main structure, provided there is no exterior display or advertising of said facilities.
 - 3. Swimming pools, tennis courts, boat docks, and similar uses shall be located not less than 35 feet from any property line.
- C. Home occupations in which customers or patrons visit the site for the delivery of goods and/or services.
- D. Public utility transformer stations, substations and gas regulator stations without service or storage yards shall comply with the requirements of this ordinance and shall be subject to the following: a front yard setback of not less than 50 feet shall be provided (irrespective of the yard requirement of the district in which it is located) and two side yards and a rear yard shall be provided, each shall not be less than 25 feet in width. The previously mentioned conditional uses shall be landscaped with a buffer of plant materials that effectively screens the view of the use from property used for residences, public walkways, and rights-of-way. The standard buffer shall consist of a landscaped strip at least six feet wide outside the perimeter of the compound. The buffer shall contain a variety of species of plants.
- E. Funeral homes.

(Ord. of 5-23-2001; Ord. of 10-9-2007, § 3; Ord. of 1-14-2020, § 2)

Sec. 4.40. - Development requirements.

A. *Building design.*

1. All exterior walls of a building that are greater than six feet in length shall be constructed parallel to or at right angles to the side lot lines of the lot whenever the lot is rectilinear in shape.
2. The primary entrance to a dwelling shall be located along the front wall of the building, unless otherwise required for barrier-free access. Such entrance shall include an architectural feature such as a porch, landing or portico.
3. Accessory buildings and attached garages shall have a front yard setback that is at least ten feet greater than the front setback of the principal building that is located on the front portion of the lot.
4. A rooftop or second floor addition shall not overhang the lower front or side exterior walls of the existing building. This requirement shall not exclude recessed dormers or entranceways.
5. In the event that a new dwelling is proposed to be constructed on the rear portion of a lot which has frontage on two streets and an alley, the front of such new dwelling shall face the street on which the dwelling is addressed.
6. The minimum pitch of the roof of any building shall be five to twelve (5:12) and the maximum pitch of the roof of any building shall be twelve to twelve (12:12), except that additions to existing dwelling units may be constructed with a pitch that matches any roof pitch of the existing dwelling unit. Additionally, the roof pitch of a dormer, turret or similar architectural feature may not exceed twenty-four to twelve (24:12) and the roof pitch of a covered porch may be flat whenever the roof of such a porch is also considered to be the floor of a second story deck.
7. Dwellings must be firmly and permanently attached to a solid concrete block, poured-in-place concrete, or stone foundation, or a foundation of other suitable materials, set upon concrete footings, below frost level. Foundation shall completely extend from the structure to footings and enclose the entire perimeter of the structure. Foundation and footings shall be constructed in accordance with the all applicable building code and all state regulations. No dwelling shall have exposed wheels, towing mechanism, or undercarriage. All dwellings shall have overhangs of not less than one foot as measured horizontally from the side of the structure to the outside edge of the eave and gable end.

B. *Landscape/hardscape material.* A maximum of 40 percent of the front yard of a lot may be covered with inorganic material such as asphalt or cement concrete, paving stone, flagstone, rock or gravel.

C. *Access.* Whenever a lot has frontage along an alley, any new off-street parking area located on such lot must obtain access from such adjoining alley; provided, however, that such alley access shall not be required when a new detached garage is proposed to be accessed from an existing driveway that has a curb cut along a public street, or when alley access is determined by the street superintendent to be a hazard to persons or vehicles.

D. *Site design.* Permanent, open, off-street parking areas for all permitted principal uses, other than single-family dwellings, shall not be located any closer to a public street right-of-way than the distance by which the principal building is set back from the street right-of-way. This provision shall not be construed to preclude temporary parking in driveways.

E. *Additional requirements.* The following requirements, unless superseded by the standards of this article, shall be met within a Traditional Residential District (TRD).

1. Development plan approval as specified in Article XIX of this ordinance, except single-family dwellings used and home occupations as a principal permitted use.
2. Off-street parking, loading, and access management standards for all uses as specified in Article XXIV of this

ordinance.

3. Signs for all uses as specified in the Boyne City Sign Ordinance.
4. Height, area, lot coverage, and yard regulations as specified in Article XX of this ordinance.
5. Landscaping requirements as specified in Article XXIII of this ordinance.
6. Design, architectural, and building material standards as specified in Article XXII of this ordinance.
7. Provisions relating to all zoning districts (as applicable in each separate case) as specified in Article XXI of this ordinance.

(Ord. of 5-23-2001; Ord. of 4-10-2018)

ARTICLE V. - WATERFRONT RESIDENTIAL DISTRICT (WRD)

Footnotes:

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Editor's note— *Ord. of 1-9-2019 amended Art. V in its entirety to read as herein set out. Former Art. V, §§ 5.10—5.60, pertained to similar subject matter and derived from Ord. of 2-28-2017 and Ord. of 4-10-2018.*

Sec. 5.10. - Purpose.

The purpose of this district is to provide a pleasant and attractive residential living environment of a low density, primarily on lots with frontage upon Lake Charlevoix and other bodies of water within the city. It is the further intent and purpose of this district to ensure that development within such lots remains at a sustainable density and scale, and does not unreasonably obstruct views, view sheds, scenic vistas, or degrade the quality of the surface waters of Lake Charlevoix and other bodies of water from other lots and public rights-of-way.

(Ord. of 1-9-2019)

Sec. 5.20. - Principal permitted uses.

No building or land shall be used and no building shall be erected except for one or more of the following specified uses, unless otherwise provided in this ordinance:

- A. Single-family detached dwellings.
- B. Municipal parks, playgrounds, and recreation centers.
- C. Adult foster care family homes, provided, this subsection shall not apply to adult foster care facilities, licensed by a state agency, for the care and treatment of persons released from or assigned to adult correctional institutions.
- D. Home occupations in which customers or patrons do not visit the site for the delivery of goods and/or services.
- E. Family day care homes.
- F. Accessory structures and uses customarily incidental to the above permitted uses, excepting that boat houses shall not be permitted.
- G. Group day care home shall have a fenced outdoor play area of at least 1,200 square feet located behind the front building line of the home.

(Ord. of 2-28-2017; Ord. of 1-9-2019)

Sec. 5.30. - Conditional uses.

The following uses shall be considered conditional and shall require conditional use approval, and shall comply with any applicable conditional use requirements of article XXV:

- A. Private recreation areas, uses and facilities including marinas, and swimming pools subject to the following:
 1. No building shall be located within 100 feet of a dwelling.
 2. Facilities such as licensed restaurants and bars may be permitted when occupying an integral part of the main structure, provided there is no exterior display or advertising of said facilities.
 3. Swimming pools, tennis courts, boat docks, and similar uses shall be located not less than 35 feet from any property line.
- B. Home occupations in which customers or patrons visit the site for the delivery of goods and/or services.
- C. Public utility transformer stations, substations and gas regulator stations without service or storage yards shall comply with the requirements of this ordinance and shall be subject to the following: a front yard setback of not less than 50 feet shall be provided (irrespective of the yard requirement of the district in which it is located) and two side yards and a rear yard shall be provided, each shall not be less than 25 feet in width. The previously mentioned conditional uses shall be landscaped with a buffer of plant materials that effectively screens the view of the use from property used for residences, public walkways and rights-of-way. The standard buffer shall consist of a landscaped strip at least six feet wide outside the perimeter of the compound. The buffer shall contain a variety of species of plants.

(Ord. of 1-9-2019)

Sec. 5.40. - Development requirements.

A. *Building design.*

1. The primary entrance to a dwelling shall be located along the front wall of the building, unless otherwise required for barrier-free access. Such entrance shall include an architectural feature such as a porch, landing or portico. However, a waterfront may have a primary entrance to the street.
2. Accessory buildings and attached garages shall have a front yard setback that is at least ten feet greater than the front setback of the principal building that is located on the front portion of the lot.
3. A rooftop or second floor addition shall not overhang the lower front or side exterior walls of the existing building. This requirement shall not exclude recessed dormers or entrance ways.
4. In the event that a new dwelling is proposed to be constructed on the rear portion of a lot which has frontage on two streets and an alley, the front of such new dwelling shall face the street.
5. The minimum pitch of the roof of any building shall be five to 12 (5:12) and the maximum pitch of the roof of any building shall be 12 to 12 (12:12), except that additions to existing dwelling units may be constructed with a pitch that matches any roof pitch of the existing dwelling unit. Additionally, the roof pitch of a dormer, turret or similar architectural feature may not exceed 24 to 12 (24:12) and the roof pitch of a covered porch may be flat whenever the roof of such a porch is also considered to be the floor of a second story deck.
6. Dwellings must be firmly and permanently attached to a solid concrete block, poured-in-place concrete, or stone foundation, or a foundation of other suitable materials, set upon concrete footings, below frost level. Foundation shall completely extend from the structure to footings and enclose the entire perimeter of the structure. Foundation and footings shall be constructed in accordance with the all applicable building code and all state

regulations. No dwelling shall have exposed wheels, towing mechanism, or undercarriage. All dwellings shall have overhangs of not less than one foot as measured horizontally from the side of the structure to the outside edge of the eave and gable end.

- B. *Landscape/hardscape material.* A maximum of 40 percent of the front yard of a lot may be covered with inorganic material such as asphalt or cement concrete, paving stone, flagstone, rock or gravel.
- C. *Access.* Whenever a lot has frontage along an alley, any new off-street parking area located on such lot must obtain access from such adjoining alley; provided, however, that such alley access shall not be required when a new detached garage is proposed to be accessed from an existing driveway that has a curbcut along a public street, or when alley access is determined by the city engineer to be a hazard to persons or vehicles.
- D. *Site design.* Permanent open off-street parking areas for all permitted principal uses, other than single-family dwellings, shall not be located any closer to a public street right-of-way than the distance by which the principal building is set back from the street right-of-way. This provision shall not be construed to preclude temporary parking in driveways.
- E. *Watercraft/dock limitation.* Each single-family detached dwelling shall be limited to the docking of three watercraft. There shall not be more than one dock per every 100 feet of waterfront. However, any waterfront lot, regardless of frontage, without a dock as of the adoption of this ordinance, may be permitted one dock.
- F. *Additional requirements.* The following requirements, unless superseded by the standards of this article, shall be met within a waterfront residential district (WRD).
 1. Development plan approval as specified in article XIX of this ordinance, except single-family dwellings and home occupations as a principal permitted use.
 2. Off-street parking, loading, and access management standards for all uses as specified in article XXIV of this ordinance.
 3. Signs for all uses as specified in the Boyne City Sign Ordinance.
 4. Height, area, lot coverage and yard regulations as specified in article XX of this ordinance with the following exception: Within the area described as follows: from the edge of Lake Charlevoix along the centerline of West Michigan Avenue to the centerline of North Lake Street to the intersection of Lower Lake Street, building height shall be defined as the vertical distance measured from the highest point of the finished grade adjacent to the building (excluding berms, flower boxes, and other similar increases in elevation) to the highest point of the roof of the building (excluding chimneys, antennas, and similar items) and such building height in this area shall not exceed 30 feet.
 5. Landscaping requirements as specified in article XXIII of this ordinance.
 6. Design, architectural, and building material standards as specified in article XXII of this ordinance.
 7. Provisions relating to all zoning districts (as applicable in each separate case) as specified in article XXI of this ordinance.

(Ord. of 4-10-2018; Ord. of 1-9-2019)

Sec. 5.50. - Nonconforming uses and structures.

Two-family and multiple-family residential dwellings shall be prohibited in the waterfront residential district (WRD). Nonconforming structures and uses which were existing at the time of enactment of this ordinance shall be subject to, and shall continue to conform to, the requirements of the respective zoning district in which the property was located prior to the

adoption of this ordinance. Such existing structures shall be allowed to be reconstructed and updated on the existing foundations, but such existing structures shall not be expanded.

Garages, decks, and open porches which meet the requirements of this ordinance, or the requirements of the respective zoning district in which the property was located prior to the adoption of this ordinance, may be added to such structures which were lawfully existing within the waterfront residential district (WRD) at the time of adoption of this ordinance.

(Ord. of 1-9-2019)

Sec. 5.60. - Setbacks.

- A. Waterfront setback: For the purposes of this ordinance the waterside of the structure shall be considered the front yard; except for docks, shoreline protection structures and walkways six feet or less in width, all other structures shall be located a minimum of 35 feet upland from the high water elevation as defined.
- B. Wetland setback: All structures or additions to existing structures shall be setback a minimum of 25 feet from areas defined as wetlands in the Boyne City Comprehensive Plan.
- C. Road setback: For the purposes of this ordinance the road side will be considered a rear yard and subject to the provisions of article XX.
- D. View shed of Lake Charlevoix: The siting of all buildings and structures along the city's lakefront shall comply with section 21.17.
- E. Non-waterfront parcels: Parcels in the waterfront residential district that do not have waterfrontage shall have a minimum front yard setback of ten feet.

(Ord. of 1-9-2019)

ARTICLE VI. - MULTIPLE FAMILY RESIDENTIAL DISTRICT (MFRD)

Sec. 6.10. - Purpose.

Multiple family residential districts (MFRD) are designated to provide sites for concentrated multiple family dwellings and related uses, as opposed to sites for individual accessory or upstairs apartments, which will serve as zones of transition between districts and to serve the needs for complexes with apartment type of units in an otherwise medium density, residential community.

Sec. 6.20. - Principal permitted uses.

No building or land shall be used and no building shall be erected except for one or more of the following specified uses, unless otherwise provided in this ordinance:

- A. Single-[family] and two-family dwellings;
- B. Multiple-family dwellings, including, but not limited to, apartments, apartment houses, townhouses, terraces, efficiency units, and right-of-way houses;
- C. Public, parochial and private schools including nursery schools; churches, temples, and similar places of worship with a maximum capacity of 500 worshipers; libraries; and community buildings;
- D. Municipal parks, playgrounds, and recreation centers;
- E. Home occupations in which customers or patrons do not visit the site for the delivery of goods and/or services;

- F. Accessory structures and uses customarily incidental to the above permitted uses; and
- G. Group day care home shall have a fenced outdoor play area of at least 1,200 square feet located behind the front building line of the home.

(Ord. of 2-28-2017)

Sec. 6.30. - Conditional uses.

The following uses shall be considered conditional and shall require conditional use approval, and shall comply with any applicable conditional use requirements of article XXV:

- A. Hospitals, convalescent and nursing homes, and funeral homes;
- B. Private recreation areas, uses and facilities including country clubs, marinas, golf courses and swimming pools subject to the following:
 1. No building shall be located within 100 feet of a dwelling;
 2. Facilities such as licensed restaurants and bars may be permitted when occupying an integral part of the main structure; provided there is no exterior display or advertising of said facilities; [and]
 3. Golf fairways, swimming pools, tennis courts, boat docks, and similar uses shall be located not less than 35 feet from any property line and shall comply with the requirements of this ordinance;
- C. Adult foster care group homes and congregate facilities;
- D. Tourist homes, boardinghouses, roominghouses, lodginghouses, and bed and breakfast inns;
- E. Home occupations in which customers or patrons visit the site for the delivery of goods and/or services; [and]
- F. Public utility transformer stations, substations and gas regulator stations without service or storage yards shall comply with the requirements of this ordinance and shall be subject to the following: a front yard setback of not less than 50 feet shall be provided (irrespective of the yard requirement of the district in which it is located) and two side yards and a rear yard shall be provided, each shall not be less than 25 feet in width. The previously mentioned conditional uses shall be landscaped with a buffer of plant materials that effectively screens the view of the use from property used for residences, public walkways and rights-of-way. The standard buffer shall consist of a landscaped strip at least six feet wide outside the perimeter of the compound. The buffer shall contain a variety of species of plants.

(Ord. of 10-9-2007, § 4)

Sec. 6.40. - Development requirements.

The following requirements shall be met within a multiple family residential district (MFRD):

- A. Development plan approval for all non-single family residential uses as specified in article XIX of this ordinance;
- B. Off-street parking, loading, and access management standards for all uses as specified in article XXIV of this ordinance;
- C. Signs for all uses as specified in the Boyne City Sign Ordinance;
- D. Height, area, lot coverage and yard regulations as specified in article XX of this ordinance;
- E. Landscaping requirements as specified in article XXIII of this ordinance;
- F. Design, architectural, and building material standards as specified in article XXII of this ordinance;
- G. Provisions relating to all zoning districts (as applicable in each separate case) as specified in article XXI of this

ordinance;

H. The following specific requirements shall apply with the multiple family residential district (MFRD):

1. The maximum number of dwelling units per acre shall not exceed ten;
2. Either public or private streets may be provided; however, all public streets must meet minimum platting requirements. If private streets are constructed, a minimum right-of-way of 66 feet is required. [The] street shall be surfaced with a Portland Cement concrete, asphaltic concrete or other approved hard surface. A typical cross section must be submitted to the city for approval;
3. In any multiple-family or multiple-group development, no building shall be closer than 25 feet to the adjacent project boundary line and within 50 feet of a public right-of-way line when the project abuts a public street or highway; and
4. In any multiple family or multiple-group development, 40 percent of the net site area shall be placed in open space of which 120 square feet per dwelling shall be developed open space. An area dedicated and improved for active recreation is required by the city and considered as part of the net open space requirement. The active recreation area shall be designed to meet a cross section of the recreation needs of the residents of the development. Within multiple-family developments, required yards may be included as open space. The net site area shall not include areas for off-street parking and loading or areas dedicated for rights-of-way and access easements.

ARTICLE VII. - MANUFACTURED HOUSING PARK DISTRICT (MHPD)

Sec. 7.10. - Purpose.

The purpose of this district is to provide sites for manufactured housing units at appropriate locations in relationship to the existing and potential development of the surroundings while establishing an attractive residential environment.

(Ord. of 1-14-2020, § 3)

Sec. 7.20. - Principal permitted uses.

- A. Manufactured housing development.
- B. Accessory structures and uses customarily incidental to the above permitted uses.

(Ord. of 1-14-2020, § 3)

Sec. 7.30. - Conditional uses.

The following uses shall be considered conditional and shall require conditional use approval, and shall comply with any applicable conditional use requirements of article XXV:

- A. Public, parochial and private schools including nursery schools, churches, temples, or similar places of worship, libraries, community buildings, hospitals, convalescent homes, and funeral homes;
- B. Private recreation areas, uses and facilities including country clubs, marinas, golf courses and swimming pools subject to the following:
 1. No building shall be located within 100 feet of a dwelling;
 2. Facilities such as licensed restaurants and bars may be permitted when occupying an integral part of the main structure; provided there is no exterior display or advertising of said facilities; [and]

3. Golf fairways, swimming pools, tennis courts, boat docks, and similar uses shall be located not less than 35 feet from any property line;
- C. Public utility transformer stations, substations and gas regulator stations without service or storage yards shall comply with the requirements of this ordinance and shall be subject to the following:

A front yard setback of not less than 50 feet shall be provided (irrespective of the yard requirement of the district in which it is located) and two side yards and a rear yard shall be provided, each shall not be less than 25 feet in width. The previously mentioned conditional uses shall be landscaped with a buffer of plant materials that effectively screens the view of the use from property used for residences. The standard buffer shall consist of a landscaped strip at least six feet wide outside the perimeter of the compound. The buffer shall contain a variety of species of plants.

(Ord. of 10-9-2007, § 5)

Sec. 7.40. - Development requirements.

The following requirements shall be met within a manufactured housing park district (MHPD):

- A. Preliminary development plan approval shall be required as set forth in article XIX of this ordinance. Following review of preliminary requirements and written notice of approval by the county drain commission, road commission, and the local health agency, the planning commission shall notify the developer of its action within 60 days of filing a complete application. Review of a final development plan shall occur as set forth in the State of Michigan Public Acts of 1987, Act No. 96.
- B. Off-street parking for manufactured homes as specified in article XXIV of this ordinance together with the following:
 1. All manufactured home sites shall be provided with two parking spaces.
 2. If on-site vehicle parking is provided, it shall be in compliance with both of the following:
 - a. The parking spaces may be either in tandem or side-by-side. If in tandem, the width shall not be less than ten feet and the combined length shall not be less than 40 feet. If side-by-side, the combined width of the two parking spaces shall not be less than 19 feet and the length shall not be less than 20 feet. In either method, the length shall be measured from the curb or inner walkway edge.
 - b. A parking space shall be hard-surfaced and shall be constructed in compliance with Act No. 8 of the Public Acts of 1973, being section 125.1361 of the Michigan Compiled Laws.
 3. If off-site vehicle parking is provided, the parking spaces shall be adjacent to the manufactured home site and shall comply with the following:
 - a. Parking facilities shall be provided for the storage of manufactured homes if a sales office is part of the development operation.
 - b. Parking facilities shall be provided for the storage of maintenance vehicles.
 - c. Parking facilities shall be provided at the office location for office visitors.
 - d. A minimum of one parking space for every three manufactured home sites shall be provided for visitor parking located convenient to the area served.
 - e. If off-site parking facilities are provided in bays and at office or other facilities, they shall be in compliance with Rule 408.30427 of the Michigan Administrative Code.
 - f. If not provided for on-site or in parking bays, a separate parking area may be provided for vehicles that

cannot be accommodated within the standards set forth in these rules, and for recreational vehicles, such as motor homes, travel trailers, and snowmobiles.

- C. Signs for all uses as specified in the Boyer City Sign Ordinance.
- D. In a manufactured home development, the following specific standards shall apply:
1. Lot area and density.
 - a. The tract to be developed shall contain a minimum of ten acres.
 - b. The manufactured home development may have a maximum density of ten units per acre.
 2. Yard requirements.
 - a. A manufactured home shall be in compliance with the following minimum distances:
 - 1) Twenty feet from any part or attached structure of another manufactured home which is used for living purposes.
 - 2) Ten feet from either an on-site parking space of an adjacent manufactured home site or an attached or detached structure or accessory which is not used for living purposes.
 - 3) Fifty feet from a permanent building.
 - 4) One hundred feet from a sports field.
 - b. Any part or structure that belongs to a manufactured home shall be set back the following minimum distances:
 - 1) Ten feet from the edge of an internal road and seven feet from a parking bay.
 - 2) Seven feet from a common pedestrian walkway.
 - 3) Ten feet from a natural or man-made lake, object, or waterway.
 - c. A manufactured home site length may vary depending on park design and layout and the manufactured home to be installed; however, the minimum standards pertaining to distance between manufactured homes shall be complied with.
 - d. Site dimensions may be computed to include the space requirements for manufactured homes which may contain expandable rooms, or in anticipation of the attachment of expansions such as add-a-rooms.
 3. Setbacks from property boundary lines.
 - a. Manufactured homes, permanent development buildings and facilities, and other structures shall not be located closer than ten feet from the property boundary line of the development.
 - b. If manufactured homes, permanent development buildings and facilities, and other structures abut a public right-of-way, they shall not be located closer than 25 feet from the park boundary line. This rule does not apply to internal roads if dedicated for public use, providing the roads do not present a nuisance or safety hazard to the development tenants.
 4. Streets.
 - a. An internal road is subject to approval by the Michigan Department of Commerce and shall be in compliance with all of the following general requirements:
 - 1) The road shall be hard-surfaced.
 - 2) The road shall have access to a public thoroughfare by a permanent easement which shall be recorded prior to approval. Sole access by an alley is prohibited.
 - 3) A dead-end road shall terminate with an adequate turning area. A blunt-end road is prohibited.
 - 4) An adequate safe-sight distance shall be provided at intersections.

- 5) An offset at an intersection or an intersection of more than two streets is prohibited.
- 6) All roads shall be clearly marked with appropriate traffic signs, subject to the provisions of Rule 701(2) as set forth by the Michigan Department of Commerce.
- 7) A road shall be named and so identified by street signs located at all road intersections.
- 8) A name for an internal road shall be approved by the municipality.
- b. A road shall have a driving surface of not less than the following:
 - 1) One way, with no parking—Thirteen feet.
 - 2) Two way, with no parking—Twenty-one feet.
- c. At access points where general traffic enters or leaves the park, the width shall be sufficient to permit free movement from or to the stream of traffic on the public roads.
5. A manufactured home development that contains 50 or more home sites which are constructed according to a permit to construct issued under the act shall have not less than two percent of the development's gross acreage dedicated to designated open space, but not less than 25,000 square feet.
6. A hard-surfaced walkway or patio connecting the dwelling with its off-street parking area shall be provided.
7. Each lot shall contain an area reserved for the placement of a living unit, the base construction (i.e., foundation, pads, ribbons, etc.) of which shall meet or exceed state specifications.
8. Each living unit shall be skirted, entirely enclosing the bottom, within 30 days after its placement. In the event of inclement weather and upon demonstration of extenuating circumstances, an extension may be granted beyond 30 days.
9. Each living unit lot shall be provided with anchors, tie downs or other devices as provided for under Rules 601—609 of the Michigan Department of Commerce Manufactured Home Commission General Rules.
10. Manufactured home development, when adjacent to a developed residential zoning district, shall be completely screened by fencing or natural growth along the entire property boundary line abutting the district. If planting material is used for the development of a natural edge, the recommendations of article XXIII of this ordinance shall be followed. These requirements may be waived when, in the planning commission's opinion, the intent of this requirement has been satisfied.

(Ord. of 1-14-2020, § 3)

ARTICLE VIII. - PROFESSIONAL OFFICE DISTRICT (POD)

Sec. 8.10. - Purpose.

The professional office district (POD) is designed to accommodate uses such as offices and personal services which can serve as transitional areas between residential and commercial districts. These are nonresidential uses of an administrative or professional nature which are necessary to the normal conduct of a community's activities.

Sec. 8.20. - Principal permitted uses.

No building or land shall be used and no building shall be erected except for one or more of the following specified uses, unless otherwise provided in this ordinance:

- A. Medical and dental offices and clinics, and offices of similar or allied professions;

- B. Professional offices and services, including insurance, legal, financial, governmental, and similar or allied profession
- C. Administrative, executive and editorial offices;
- D. Real estate and other general business offices, not including exhibiting or storing of products for sale;
- E. Schools for arts and crafts, photography and studios for music or dancing;
- F. Barbershops, beauty shops, and hair stylists;
- G. Accessory structures and uses customarily incidental to the above permitted uses; [and]
- H. Single family dwellings.

Sec. 8.30. - Conditional uses.

The following uses shall be considered conditional and shall require conditional use approval and shall comply with any applicable conditional use requirements of article XXV:

- A. Banks and financial institutions;
- B. Public, parochial and private schools including nursery schools, churches, temples, or similar places of worship, libraries, community buildings, hospitals, convalescent and nursing homes, and funeral homes;
- C. Any personal service or office use not specified as a principal permitted use which the planning commission finds to be consistent with the purposes of this section and will not impair the present or potential use of adjacent properties;
- D. Public utility transformer stations, substations and gas regulator stations without service or storage yards shall comply with the requirements of this ordinance and shall be subject to the following: a front yard setback of not less than 50 feet shall be provided (irrespective of the yard requirement of the district in which it is located) and two side yards and a rear yard shall be provided, each shall not be less than 25 feet in width. The previously mentioned conditional uses shall be landscaped with a buffer of plant materials that effectively screens the view of the use from property used for residences, public walkways and rights-of-way. The standard buffer shall consist of a landscaped strip at least six feet wide outside the perimeter of the compound. The buffer shall contain a variety of species of plants; [and]
- E. Other office uses not specifically stated or implied elsewhere which, in the determination of the planning commission, are similar to the principal permitted uses provided herein, and in harmony with the character of the district and the purpose and intent of this article and the comprehensive plan of the city.

(Ord. of 10-9-2007, § 6)

Sec. 8.40. - Development requirements.

The following requirements shall be met within a professional office district (POD):

- A. Development plan approval for all non-single-family residential uses as specified in article XIX of this ordinance;
- B. Off-street parking, loading, and access management standards for all uses as specified in article XXIV of this ordinance;
- C. Signs for all uses as specified in the Boyne City Sign Ordinance;
- D. Height, area, lot coverage and yard regulations as specified in article XX of this ordinance;
- E. Landscaping requirements as specified in article XXIII of this ordinance;
- F. Design, architectural, and building material standards as specified in article XXII of this ordinance; [and]
- G. Provisions relating to all zoning districts (as applicable in each separate case) as specified in article XXI of this

ordinance.

ARTICLE IX. - WATERFRONT MARINA DISTRICT (WMD)

Sec. 9.10. - Purpose.

The waterfront marina district (WMD) is designed to accommodate commercial and recreational boating along with those activities and services related to harbor and waterway improvements, thereby facilitating navigation and providing safe and economical waterfront development.

Sec. 9.20. - Principal permitted uses.

No building or land shall be used and no building shall be erected except for one or more of the following specified uses, unless otherwise provided in this ordinance:

- A. Municipal or private marinas and other facilities for the berthing, launching, protecting, or servicing of boats, yachts, cruisers, inboards, outboards, and sailboats, not including outdoor storage of boats;
- B. Fueling stations, including the sale of propane gas, for the exclusive use by watercraft;
- C. Commissary facilities for the provision of food, beverages, and similar products to be stored aboard boats;
- D. Municipal or private beaches, parks, and other recreation areas;
- E. Retail businesses which supply commodities for persons using facilities of the district such as the sale of boats, engines and accessories, fishing equipment, and other similar items;
- F. Restaurants and taverns, not including drive-in or drive-through, having a total seating capacity (indoor and outdoors) of 60 seats or more. The exterior of the building shall be compatible with the city's design standards;
- G. Transient marinas; [and]
- H. Accessory structures and uses customarily incidental to the above permitted uses, excluding any accessory use listed as a conditional use in section 9.30.

Sec. 9.30. - Conditional Uses.

The following uses shall be considered conditional and shall require conditional use approval and shall comply with any applicable conditional use requirements of article XXV:

- A. Engine and hull repair shops;
- B. Mixed use buildings with business, commercial, or service uses on the ground floor and residential or office uses on the upper floors. Business and office uses may occupy a building used for residential uses; provided that no such business or office may be located on the same floor as used for residential purposes, and no floor may be used for business or office use on a floor located above a floor used for residential purposes. Further, where there is mixed business/office and residential use in a building, there shall be provided a separate, private entranceway for the residential uses. Ground floor business, commercial, or service uses shall not exceed 5,000 square feet per use. The building shall have a presence to the street, being built to the right-of-way line or equivalent whenever possible. The exterior of the building shall be compatible with the city's design standards;
- C. Municipal or private port facilities;
- D. Retail establishments which supply commodities for sale or rental whose floor area is a maximum of 5,000 square feet. Retail establishments may be attached and/or clustered; provided that each establishment does not

exceed 5,000 square feet. The building shall have a presence to the street, being built to the right-of-way line or equivalent whenever possible. The exterior of the building shall be compatible with the city's design standards;

- E. Public utility transformer stations, substations and gas regulator stations without service or storage yards shall comply with the requirements of this ordinance and shall be subject to the following: a front yard setback of not less than 50 feet shall be provided (irrespective of the yard requirement of the district in which it is located) and two side yards and a rear yard shall be provided, each shall not be less than 25 feet in width. The previously mentioned conditional uses shall be landscaped with a buffer of plant materials that effectively screens the view of the use from property used for residences, public walkways and rights-of-way. The standard buffer shall consist of a landscaped strip at least six feet wide outside the perimeter of the compound. The buffer shall contain a variety of species of plants;
- F. Personal service establishments, including but not limited to repair shops, beauty parlors and styling shops, tailor and dressmaking shops, photographic studios, copy centers, interior designers and decorators, and postal centers. Personal service establishments shall have a presence to the street and be built to the right-of-way line or equivalent whenever possible. The exterior of the building shall be compatible with the city's design standards;
- G. Other office uses not specifically stated or implied elsewhere which, in the determination of the planning commission, are similar to the principal permitted uses provided herein, and in harmony with the character of the district and the purpose and intent of this article and the comprehensive plan of the city; [and]
- H. Hotel, as defined in this ordinance, under article I. In addition to meeting the definition requirement of article I, a hotel use in the WMD shall also include permitted commercial, retail or service uses on a minimum of 15 percent of the "gross floor area", which is further defined as the gross "floor area" of the first floor as depicted in "Floor Area Terminology" and "Basic Structural Terms." The planning commission may reduce this standard provided:
 - (1) It determines the proposed public access to the property provides additional access that did not exist prior to the proposed development;
 - (2) The access links to a comprehensive public access system; and
 - (3) The access is dedicated to the public.

In no event shall the minimum percent of commercial, retail or service uses be less than ten percent of the gross floor area. A hotel in the WMD may include office uses on the upper floors as part of the overall structure. The exterior of a hotel in the WMD shall be compatible with the city's design standards.

(Ord. of 8-26-2003, § 2)

Sec. 9.40. - Nonconforming uses and structures.

Two-family and multiple-family residential dwellings shall be prohibited in the waterfront marina district (WMD). Nonconforming structures and uses which were existing at the time of enactment of this ordinance shall be subject to, and shall continue to conform to, the requirements of the respective zoning district in which the property was located prior to the adoption of this ordinance. Such existing structures shall be allowed to be reconstructed and updated on the existing foundations, but such existing structures shall not be expanded.

Garages, decks, and open porches which meet the requirements of this ordinance, or the requirements of the respective zoning district in which the property was located prior to the adoption of this ordinance, may be added to such structures which were lawfully existing within the waterfront marina district (WMD) at the time of adoption of this ordinance.

Sec. 9.50. - Setbacks.

- A. *Waterfront setback*: For the purposes of this ordinance the waterside of the structure shall be considered the front yard; except for docks, shoreline protection structures and walkways six feet or less in width, all other structures shall be located a minimum of 35 feet upland from the high water elevation as defined.
- B. *Wetland setback*: All structures or additions to existing structures shall be set back a minimum of 25 feet from areas defined as wetlands in the Boyne City Comprehensive Plan.
- C. *Road setback*: For the purposes of this ordinance the roadside will be considered a rear yard and subject to the provisions of article XX.
- D. *Viewshed of Lake Charlevoix*: The siting of all buildings and structures along the city's lakefront shall comply with section 21.17.

Sec. 9.60. - Development requirements.

The following requirements shall be met within a waterfront marina district (WMD):

- A. All dredging, construction, and/or development shall be subject to the requirements of this ordinance and the city's Code of Ordinances;
- B. Development plan approval for all uses as specified in article XIX of this ordinance;
- C. Off-street parking, loading, and access management standards for all uses as specified in article XXIV of this ordinance;
- D. Signs for all uses as specified in the Boyne City Sign Ordinance;
- E. Height, area, lot coverage and yard regulations as specified in article XX of this ordinance;
- F. Landscaping requirements as specified in article XXIII of this ordinance;
- G. Design, architectural, and building material standards as specified in article XXII of this ordinance; [and]
- H. Provisions relating to all zoning districts (as applicable in each separate case) as specified in article XXI of this ordinance.

ARTICLE X. - CENTRAL BUSINESS DISTRICT (CBD)

Footnotes:

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Editor's note— *Ord. of 2-12-2019(3) amended Art. X in its entirety to read as herein set out. Former Art. X, §§ 10.10—10.50, pertained to similar subject matter and derived from Ord. of 9-11-2007, § 2 and Ord. of 2-28-2017.*

Sec. 10.10. - Purpose.

The central business district (CBD) is established for the purpose of accommodating the highest concentration of retail and service establishments. Collectively, the uses permitted in this district are intended to provide a convenient and attractive retail and service center for the community, its rural trade area, and the city's tourist traffic. A prime characteristic of this district is the offering of a variety of goods and comparison shopping opportunities directed primarily at the pedestrian shopper. This district is designed and intended to promote the development of a pedestrian oriented and accessible, central commercial service district where a variety of mutually supporting retail, commercial, office, civic and limited residential uses are permitted. Each use shall be complementary to the stated function and purpose of the district and shall not have adverse impact upon

adjacent street capacity and safety, utilities, and other city services. In an effort to encourage this type of character, and provide for the health, welfare and safety of the pedestrian in the area, drive-in and drive-through operations are excluded from this district.

The CBD is further designed and intended to:

- A. Encourage innovative, traditional and neo-traditional commercial and mixed use developments.
- B. Encourage a lively social environment and economically viable downtown with a wide variety of uses in a pedestrian-oriented setting, with shared parking.
- C. Extend greater opportunities for traditional community living, working, housing and recreation to all citizens, residents, and visitors of the city.
- D. Encourage a more efficient use of land and public services, and to reflect changes in technology of land development by directing new development in a traditional, compact, and consolidated pattern of mixed use and varied commercial styles.
- E. Reduce the excessive sprawl of development and the segregation of land uses that cause unnecessary traffic congestion.
- F. Prohibit the development of drive-in and drive-through facilities, which contributes to traffic congestion and poses a threat to the pedestrian environment.
- G. Discourage the development of separate off-street parking facilities for each individual use, and to encourage the development of off-street parking facilities designed to accommodate the needs of several individual uses.
- H. Prohibit uses that do not deal directly with consumers and are disruptive to pedestrian activities.
- I. Promote the creation of urban places which are oriented to the pedestrian thereby promoting citizen security and social interaction.
- J. Promote developments where the physical, visual and spatial characteristics are established and reinforced through the consistent use of compatible urban design and architectural design elements which improves the visual character of the downtown. Such elements shall relate to the design characteristics of an individual structure or development, to other existing and planned structures or developments in a harmonious manner, resulting in coherent overall design and development patterns for the downtown.
- K. Prohibit commercial and business uses that create objectionable noise, glare, odors, or other nuisances.
- L. Encourage development of an urban Main Street with mixed land uses, shared parking, and continuous frontage which not only serves the needs of the immediate neighborhood, but also the city and surrounding areas as a whole.

(Ord. of 2-12-2019(3))

Sec. 10.20. - Principal permitted uses.

In the CBD, no use shall be permitted, unless otherwise provided in this ordinance, except for the following:

- A. Apartment buildings, up to a maximum of eight units per building.
- B. Art galleries.
- C. Bus passenger stations.
- D. Business schools and colleges.
- E. Business establishments which perform services on premises such as, but not limited to: banks, savings and loans and credit unions (excluding drive-through branches and drive-through lanes); brokerage houses;

insurance, real estate, and travel agencies; pedestrian-oriented automated teller machine facilities.

- F. Churches, temples, and similar places of worship, limited to a capacity of 500 worshipers.
- G. Clubs, fraternal organizations, and lodge halls.
- H. Dry cleaning establishments, or pick-up stations, dealing directly with the consumer, limited to 2,000 square feet of floor area. Central dry cleaning plants serving more than two retail outlets shall be prohibited.
- I. Essential public services, telephone exchanges, public utility offices, substations and uses when conducted within a completely enclosed building, excluding storage yards, provided the use and building are consistent with the appearance and character of the downtown as determined by the planning commission.
- J. Hotels, motels, bed and breakfast inns, and bed and breakfast houses.
- K. Laundromats (self-service or coin-operated).
- L. Medical offices including offices of doctors, dentists and similar or allied professions, with up to 10,000 square feet gross floor area.
- M. Mixed-use buildings, with residential and all principle permitted uses as specified by this section subject to the following conditions: Residential units located on the first floor shall be located to the rear of the commercial uses, the units shall not have frontage on any adjacent street and shall be provided a separate, private pedestrian entranceway.
- N. Newspaper offices and publishers, and commercial printers.
- O. Nursery schools, day nurseries, and child care centers, provided that:
 - 1. There is provided and maintained a minimum of 150 square feet of indoor and/or outdoor play area per child and provided that such total area shall not be less than 5,000 square feet. The planning commission may waive these requirements if it determines there is adequate indoor play area, or if there is a public park or playground within the immediate area which can be safely accessed by those children attending such use.
 - 2. Such use shall be fenced and screened from any adjoining lot if an on-site outdoor play area.
 - 3. Adequate ingress and egress, and parking and circulation, as determined by the planning commission, shall be provided.
 - 4. Such use shall not be located within 500 feet, or further if determined necessary by the planning commission, from those uses the planning commission determines to be incompatible or would present a danger to the health, safety and welfare to the children attending such use.
- P. Offices of an executive, administrative or professional nature, with up to 10,000 square feet gross floor area.
- Q. Outdoor cafes, outdoor eating areas, carry-out, and open front restaurants, subject to the following site design standards:
 - 1. Outdoor cafes may be permitted within the boundaries of a parcel or lot, on a building roof top, or as part of a patio or deck.
 - 2. The outdoor cafe must be kept clean, litter-free, and with a well-kept appearance within and immediately adjacent to the area of the tables and chairs. Additional outdoor waste receptacles may be required.
 - 3. Tables, chairs, planters, waste receptacles, and other elements of street furniture shall be compatible with the architectural character of the adjacent buildings. If table umbrellas will be used, they shall complement building colors.
 - 4. Other additional signs are not permitted beyond those permitted for the existing restaurant.
- R. Outdoor theaters (excluding drive-in theaters), plazas, parks, and public gathering places.

- S. Personal service establishments within a completely enclosed building, provided that each occupies a total usable floor area not more than 4,000 square feet, including, but not limited to, such uses as: repair shops (watches, radio, television etc.), tailor and dressmaking shops, beauty parlors and styling salons, barber shops, photographic studios, film processing outlets, copy centers, interior decorators, and postal centers.
- T. Public, quasi-public, and institutional uses such as, but not limited to, municipal buildings and offices, court houses, public off-street parking facilities, libraries, museums, public safety facilities, parks and playgrounds, post offices, and civic centers, but excluding storage yards.
- U. Retail businesses which supply commodities on the premise of up to 20,000 square feet of gross floor area, such as but not limited to: groceries, meats, fruits and produce, dairy products, baked goods, candies, wine (specialty wine shops only) and other specialty food products (such products can be produced on the premises as an accessory use provided they are sold on the site at retail prices); and stores selling drugs, dry goods, flowers, clothing, notions, books and magazines, toys, sporting goods, shoes, tobacco products, musical instruments, recorded music, video rentals and sales, gifts and souvenirs, antiques, furniture, and hardware.
- V. Retail sales in which both a workshop and retail outlet or showroom are required, such as plumbing, electrician, interior decorating, upholstering, printing, photographic-reproducing, radio, and home appliance and similar establishments of similar character subject to the provision that not more than 80 percent of the total useable floor area of the establishment shall be used for servicing, repairing, or processing activities and further provided that such retail outlet or showroom activities area shall be provided in that portion of the building where the customer entrance is located.
- W. Restaurants (excluding drive-in restaurants and those with drive-through facilities), taverns (pubs), and brewpubs where the patrons are served while seated within the building occupied by such establishment.
- X. Single-family detached dwellings, provided all requirements for the traditional residential district (TRD) are met, except as required in this article herein. The minimum distance between buildings shall be ten feet. Front building setbacks shall equal the average setback line of the block, as determined by the planning commission, or ten feet. Building setback to any side property line where adjacent to non-residential property shall be 15 feet. Driveways, parking and walls may be within a side or rear setback.
- Y. Studios for art, music, dance, or theatrical instruction.
- Z. Theaters, assembly halls, community centers, or similar places of assembly when conducted completely within enclosed buildings.
- AA. Veterinary clinics and animal grooming, provided all activities are conducted within an enclosed building, with up to 10,000 square feet gross floor area.
- BB. Accessory buildings and uses customarily incidental to the above permitted uses (i.e., entertainment facilities).
- CC. Group day care home shall have a fenced outdoor play area of at least 1,200 square feet located behind the front building line of the home.

(Ord. of 2-12-2019(3); Ord. of 1-14-2020, § 4)

Sec. 10.30. - Conditional uses.

In the CBD, the following uses shall be considered conditional and require a conditional use permit. Such uses may be permitted subject to applicable site design standards hereinafter imposed and subject further to the conditional use approval procedures of [section 2.70](#), Conditional Uses in Districts:

- A. Automobile, truck, motorcycle, trailer, recreational vehicle or boat dealerships, either new or used, with

customary accessory uses such as, but not limited to, engine, chassis and body repair, painting, car rental, etc. The planning commission may permit outdoor storage for such uses provided it determines the design, placement, and screening of such outdoor storage (not including display of merchandise) meets or exceeds the intent and purposes of this article.

- B. Bars and cocktail lounges (night clubs), provided no outdoor cafe, outdoor eating area, carry-out, or open front area shall be permitted. The planning commission may waive this requirement, and the 30 percent floor area limitation on bar areas for existing buildings, only if a full-service menu is provided for the on-site consumption of food, and the planning commission determines that the use is more characteristic of a tavern (pub) than a cocktail lounge (night club).
- C. Commercial parking lots and structures.
- D. Indoor recreational centers, including the following: bowling alleys, roller and ice skating rinks, pool or billiard halls, pinball and mechanical amusement device arcades, and other general indoor recreation facilities.
- E. Lumber yards and building supplies. The planning commission may permit outdoor storage for such uses provided it determines the design, placement, and screening of such outdoor storage meets or exceeds the intent and purposes of this article.
- F. Funeral homes.
- G. Open air business uses (as defined in [section 1.40](#)), unless otherwise permitted in herein.
- H. Party stores.
- I. Public utility transformer stations, substations, and natural gas regulator stations without service or storage yards, subject to the following: A front yard setback of not less than 50 feet shall be provided (irrespective of the yard requirements of the CBD) and two side yards and a rear yard shall be provided, each shall not be less than 25 feet in width. The previously mentioned conditional uses shall be screened by either decorative or ornamental masonry wall of at least six feet in height, or a berm, buffer strip, or green belt, as defined in article XXIII of this ordinance, or a combination of a wall and a berm, buffer strip, or greenbelt.
- J. Senior housing and housing for the elderly.
- K. Outdoor displays of merchandise in the public right-of-way subject to the following:
 - 1. All merchandise shall be limited to that normally sold by the business.
 - 2. Merchandise displayed shall abut the building and occupy not more than 75 percent of the width of the store front for displays of goods.
 - 3. Displays of merchandise shall not exceed four feet in height.
 - 4. Merchandise shall not be displayed beyond the hours of operation of the business and must be removed completely from the right-of-way at the end of the business day.
 - 5. There shall be no off-premises advertising used in connection with any outdoor display of merchandise.
 - 6. Merchandise shall be for display only and not in a state of operation.
 - 7. Merchandise shall not have sharp edges, open flames, barbed wire or otherwise represent a health or safety hazard to customers or pedestrians.
 - 8. No outdoor display shall cause damage including discoloration to the sidewalk, street trees, planters, street furniture, or other public structure.
 - 9. No public right-of-way may be used for display of merchandise on July 4.
 - 10. The party responsible for the outdoor display shall provide evidence of insurance coverage naming the city as an additional insured party in an amount acceptable to the city.

- L. Other uses not specifically stated or implied elsewhere which, in the determination of the planning commission, are the principal permitted uses provided herein, and are in harmony with the character of the downtown, this article, its purpose and intent of the comprehensive plan of the city.

(Ord. of 2-12-2019(3))

Sec. 10.40. - Prohibited uses.

Uses permitted in the general commercial district (GCD), regional commercial/industrial district (RC/ID), or any other zoning districts, unless incorporated in this article herein specifically or by reference, are neither principal permitted uses nor conditional uses in the CBD.

(Ord. of 2-12-2019(3))

Sec. 10.50. - Development requirements.

Buildings in the CBD should possess architectural variety, but must enhance the overall cohesiveness of the downtown's character and appearance as determined by the planning commission. Building heights, story levels, window sizes and proportions, architectural features, and building materials must remain consistent with those of existing or adjacent buildings within the downtown.

Except as otherwise noted, buildings and uses in the CBD shall comply with the following requirements:

- A. *Development plan.* Development plan approval for all uses as specified in article XIX of this ordinance. The planning commission may also request a preliminary or conceptual review by the downtown development authority or its architectural review committee for development plans within the CBD.
- B. *Building placement.* Buildings shall be built at lot lines with no setbacks, or the average setback of other buildings on the block as determined by the planning commission. The commission may require greater setbacks if such space, in their determination, is needed for off-street parking or other requirements.
- C. *Building height.* New buildings must contain at least two stories if the building is proposed for a corner lot or is adjacent to a multiple story building, unless the planning commission determines requiring a second story will not significantly enhance the character and appearance of the downtown.
- D. *Building mass.* Buildings located at gateways entering the CBD central business district shall mark the transition into and out of the downtown in a distinct fashion, using massing, additional height, contrasting materials and architectural embellishments to obtain this effect. Buildings on corner lots shall be considered more significant structures, since they have at least two front facades visibly exposed to the street. The planning commission may require additional height and architectural embellishments, such as corner towers, relating to their location.
- E. *Facade design.* All visible building facades from public right-of-way or public land shall conform with the following design criteria:
 1. *Architectural features.* Building facades greater than 33 feet in length shall contain architectural features, details and ornaments that are consistent with predominating architectural styles found within the downtown such as: arches; roof cornices; contrasting bases; contrasting masonry courses, or molding; pilasters or columns; corbeling; contrasting bands or color; stone or ceramic accent tiles; colonnades; or porches. Elements such as wall clocks, decorative light fixtures, and door or window canopies are recommended. Blank, windowless walls are prohibited.

All non-residential buildings must have interior downspout and gutter systems; exterior downspouts and gutters are not permitted for non-residential buildings, except for those originally constructed for single-family residential purposes.

2. *Fenestration.* All facades visible from the street must contain glazed glass windows. Windows shall be recessed and include visually obvious sills. Spaces between windows shall be formed by columns, mullions, or material found elsewhere on the facade. Clear window glass is recommended; green, blue, bronze, or smoke tints are permitted. Window shapes shall be rectangular, square, or palladian (mostly rectangular with semi-circular top).
- a. Glazing on the first floor shall occupy a minimum 60 percent and a maximum of 70 percent of the facade. No glazing on first floor shall be placed less than two feet six inches above the sidewalk. No glazing on the first floor shall be placed more than eight feet above sidewalk.
 - b. Glazing on the second or higher floors shall be a minimum 30 percent and a maximum of 60 percent of the facade.

Vertical window orientation shall have a width-to-height ratio of at least one to two, and shall be consistent with adjacent buildings. Horizontal windows with a width-to-height ratio of between one to one and four to one may be permitted by the planning commission if they determine such window orientation is consistent with the appearance and character of the downtown.

Shutters, if used, shall be mounted on either side of a window shall be equal to one-half of the width and one times the height.

3. *Building materials.* Building materials must be consistent with the surrounding neighborhood character, as determined by the planning commission. Building materials on the front facade or any facade visible from a public right-of-way must be primarily of natural materials conveying permanence, as determined by the planning commission. Each front facade, any facade visible from a public right-of-way, and any facade with a dedicated public entrance into the building should contain at least 60 percent of the recommended materials listed below, excluding window areas.
- a. *Recommended materials.* Brick; stone; wood; concrete slab (poured-in-place, tilt-up construction).
 - b. *Acceptable materials.* Split face, scored, or ground face block; beveled wood siding (lap, board and batter, shake); exterior finish insulation systems (EIFS).
 - c. *Discouraged materials.* Smooth face block; vinyl siding; metal siding (standing seam panels, aluminum siding); clear and reflective glass; T-111 and other wood panel siding which resembles any other discouraged material.

Acceptable or discouraged materials, or similar synthetic or highly-reflective materials should not be used except for decorative or accent features only. Exterior insulation finish systems (EIFS) may be used for decorative or accent features, and may also be a primary facade material provided it is placed at a height of 12 feet or greater and provided it is no more than 20 percent of the total facade area, excluding window areas.

4. *Exterior colors.* Exterior colors shall be compatible with the colors on adjacent buildings, subject to review and approval by the planning commission. The following natural colors are encouraged for the main portions of building facades and roof forms: neutral earth tones (sand to brown); shades of gray; traditional colors (e.g., brick red, forest green, navy blue); light, subdued hues (e.g., salmon); or white. Contrasting, accent colors which are compatible with the primary colors listed above are encouraged for trim, accent, and other

decorative architectural features. The use of bright or fluorescent colors (e.g., purple, orange, pink, lime, yellow) is discouraged. Colors should be natural to the material or pigmented, and not painted on the material whenever possible.

Proposed colors shall be specified on the development plan. Samples of building materials and colors are required at the time of development plan review for review and approval of the planning commission.

Development plan reviews may be postponed for lack of building samples.

- F. *Side or rear facade design.* All sides of a building shall be similar in design, detail, and material to present a cohesive appearance to neighboring properties. Wherever a side or rear facade is visible from a public right-of-way, or if parking is located at the side or rear of a building, the facade shall be designed to create a pleasing appearance, in accordance with the following design criteria:
1. Materials and architectural features similar to those present on the front of the building shall be used on the side or rear facade. All visibly exposed sides of a building shall have an articulated base course and cornice. The base course shall align with either the kickplate or sill level of the first floor. The cornice shall terminate or cap the top of a building wall, and may project out horizontally from the vertical building wall plane and may be ornamented with moldings, brackets and other details. The middle section of a building may be horizontally divided at floor, lintel, or sill levels with belt or string courses.
 2. Waste receptacle and service areas shall be completely screened with a decorative masonry wall or some other acceptable form of screening as approved by the planning commission.
 3. Open areas shall be landscaped with lawn, ground cover, ornamental shrubs and trees. On every site involving new development or redevelopment, foundation plantings adjacent to the building shall be provided. The species and design shall meet the requirements of article XXIII, Landscaping Requirements.
- G. *Building entrances.* All buildings shall have at least one primary public entrance that faces a public street unless a building does not face a public street and/or right-of-way. Rear entrances are permitted, only if there is a primary entrance from a public street. Main entrances to buildings shall incorporate devices such as canopies, recessed entrance ways, larger door openings and display windows, accent colors, and architectural details such as tile work, moldings, and distinctive door pulls.
1. *Doors.* Doors measuring seven and eight feet high are highly recommended. Doors measuring six feet eight inches high shall have a glass transom with a minimum height of 12 inches.
- H. *Rooflines.* Rooflines shall be consistent with adjacent buildings and the surrounding neighborhood character as determined by the planning commission. Flat roofs shall be used in the CBD. Distinctively shaped roof forms, detailed parapets, and exaggerated cornice lines shall be incorporated into rooflines along building facades greater than 33 feet. Mansard, mock mansard, or barrel roofs are prohibited.
- Pitched roof forms (gable, hip, shed) with overhanging eaves and between four inches of vertical rise to 12 inches of horizontal run and 12 inches of vertical rise to 12 inches of horizontal run may be used within the CBD if similar rooflines are used on adjacent buildings, or if the planning commission determines such a roof will be consistent with the appearance and character of the downtown.
- I. *Lighting.* Exterior lighting must be placed and shielded so as to direct the light onto the site and away from adjoining properties. The lighting source shall not be directly visible from adjoining properties. Floodlights, wall pack units, other types of unshielded lights, and lights where the lens is visible outside of the light fixture shall be prohibited, except where historic-style lighting is used that is compatible with existing historic-style lamps approved by the planning commission.
1. Sidewalks and parking areas shall be properly lit to facilitate the safe movement of pedestrians and vehicles

and provide a secure environment. In parking areas, the light intensity shall average a minimum of one foot candle, measured five feet above the surface. Parking lot lighting shall be consistent and/or similar with other fixtures used throughout the downtown, as determined by the planning commission, and no greater than 24 feet. In pedestrian areas, the light intensity shall average a minimum of two foot candles, measured five feet above the surface.

J. *Canopies and awnings.* Canopies and awnings shall be permitted on buildings as follows:

1. All awnings must be made from canvass fabric or similar water-proofed material, rather than metal, aluminum, plastic, vinyl, or rigid fiberglass.
2. All awnings shall be attached directly to the building, rather than supported by columns or poles.
3. In buildings with multiple storefronts, compatible awnings shall be used as a means of unifying the structure.

K. *Signs.* Signs for all uses shall be permitted as specified in the Boyne City Sign Ordinance.

L. *Mechanical equipment.* All units and appliances for air conditioning, HVAC systems, exhaust pipes or stacks, elevator housing and satellite dishes or other telecommunications receiving devices shall be thoroughly screened from view from the public right-of-way and from adjacent properties, by using walls, fences, roofline elements, penthouse-type screening devices or landscaping.

Fire escapes shall not be permitted on a building's front facade. In buildings requiring a second means of egress pursuant to the local building codes, internal stairs or other routes of egress shall be used.

Solid metal security gates or solid roll-down metal windows shall be prohibited. Link or grill type security devices shall be permitted only if installed from inside, within the window or door frames; or if installed on the outside, if the coil box is recessed and concealed behind the building wall. Security grills shall be recessed and concealed during normal business hours. Models which provide a sense of transparency by colors, are encouraged. Other security devices fastened to the exterior walls are prohibited.

M. *Parking and loading.* The planning commission shall determine if the number of off-street parking and loading/unloading spaces required per article XXIV of this ordinance shall be met, or if a lesser number spaces or no spaces are required due to the following: the availability of on-street parking spaces, off-site parking lots, or municipal parking lots; a finding that patrons will either walk to the site from nearby neighborhoods, or will park at other sites and visit several uses at one time; or the placement and configuration of existing buildings. If required, parking lot design shall comply with the standards below, in addition to the provisions of article XXIV.

1. No new parking lot shall be created nor any existing parking lot expanded in front of a building. If the planning commission determines that a new parking lot must be created or an existing parking lot must be expanded the parking lot shall be located to the rear of buildings on the interior of the lots, accessed by means of common driveways, preferably from side streets or lanes. Such parking lots shall be small in scale where possible, and interconnected with commercial parking lots on adjacent properties. Cross-access easements for adjacent lots with interconnected parking lots shall be required, in language acceptable to the city attorney. Common, shared parking facilities are encouraged, wherever possible.
2. Parking located on the side of a building shall be screened from the road with either: a 36-inch decorative masonry or stone wall; a 48-inch ornamental fence; or a 36-inch evergreen hedge in accordance with article XXIII of this ordinance.
3. In order to maximize the amount of land area left for landscaping and open space, paving shall be confined to the minimum area necessary to comply with the parking requirements of article XXIV of this ordinance.
4. Parking lot layout shall take into consideration pedestrian circulation; pedestrian crosswalks shall be

provided, where necessary and appropriate, and shall be integrated into the pedestrian network system. Pavement textures shall be required on pedestrian access ways, and strongly encouraged elsewhere in the parking lot, as surfacing materials, or when used as accents.

5. For uses, which because of the density of development and the existing zoning regulations in the CBD, cannot provide additional parking, a parking improvement fund (PIF) is hereby established. The creation of additional commercial floor space or accessory residential floor space or, in the judgment of the city, a change in use which requires additional parking, shall require the provision of parking in accordance with article XXIV of this ordinance; provided that the planning commission and the city commission may waive all or part of the requirement, provided that the application and/or property owner pays into the PIF a fee as established by the city commission. The payments into the PIF shall be used for public parking in the CBD. The parking spaces constructed with the PIF shall be unreserved and available to the public. Existing parking spaces on site shall be assigned to existing uses and may not be assigned to newly created floor space or uses, unless sufficient parking spaces are provided on site which meet the requirements of existing floor space and/or uses. Nothing within this section shall preclude a property owner, who has property within the CBD from building to the limits of his/her property as allowed by this ordinance. In exchange for permission to build to the limits of the property, the owner must contribute to the PIF on a per space basis, since the PIF will have the responsibility of making up the lost spaces.
 6. Off-street parking spaces under private ownership existing on the date of adoption of this zoning ordinance shall not be converted to another use without the review and approval of the planning commission in accordance with the development plan standards of article XIX of this ordinance.
- N. *Service access.* A service alley or designated loading space shall be reserved at the rear of the building. Loading from secondary streets may be permitted by the planning commission upon demonstration by the applicant that through traffic flow and access to neighboring uses will not be disrupted.
- O. *Landscaping.* Landscaping shall comply with the provisions of article XXIII of this ordinance, in addition to the standards below:
1. On every site involving new development or redevelopment, street trees with a minimum caliper of two and one-half inches shall be provided at 25-foot intervals. Any of the following street trees with a minimum caliper of two and one-half inches shall be planted within the road right-of-way at 25-foot intervals: Red Maple, Green Ash, Bradford Pear, or Little Leaf Linden, White Ash, or Honey Locust, subject to review and approval by the planning commission.
 2. On every site involving new development or redevelopment, a landscape plan shall be submitted for review and approval. The landscape design shall compliment the character of the downtown.
 3. Lots for apartment and non-residential uses shall balance the functional requirements of parking with the provision of pedestrian amenities. Transition areas between parking and civic, commercial or residential uses shall be designed with textured paving, landscaping and street furniture.
- P. *Screening.* Where a new or expanded use occurs in this district, after the effective date of this zoning ordinance, which new or expanded use abuts directly upon a residential district, protective screening shall be provided in accordance with the following standards:
1. A landscaped berm, buffer strip, or greenbelt meeting the requirements of article XXIII of this ordinance shall be provided and maintained along the entire length of a contiguous, single-family residential district. In addition, such sites shall be screened from such contiguous, single-family residential district by either a building housing a permitted use or by a solid masonry wall, ornamental on both sides, and not less than six

feet in height above grade, between the required greenbelt area and the use. Such walls shall be constructed of the same materials as that of the main or principal building, and be faced with either brick, decorative block, or pre-cast concrete formed into a decorative pattern and painted in the same color scheme as that of the principal building.

If, in the opinion of the planning commission, the greenbelt would serve no good purpose, the planning commission may waive such requirement and provide only the wall between the contiguous, single-family residential district and the site.

When vehicles, open air displays, waste receptacles, or other features generally exceed a six-foot height, the wall shall be increased to a height adequate to completely screen such features not exceeding ten feet. All such walls shall be of uniform height around the premises and the design of such wall shall be first approved by the planning commission.

2. Where required walls are provided on the business side of public alleys, wall requirements may be waived to provide necessary entrance to or exit from required off-street parking and loading areas, provided the parking area is in mid-block with no possibility for street ingress or egress, and provided, further, that such opening, if approved by the police department, and the planning commission, shall be stepped down to a three-foot level for a minimum of ten feet on each side of the opening.

- Q. *Courtyards and plazas.* Exterior public and semi-public spaces, such as courtyards or plazas, shall be designed for function, enhance surrounding buildings, and provide amenities for users in the form of textured paving, landscaping, lighting, trees, benches, trash receptacles and other items of street furniture, as appropriate. Courtyards shall have recognizable edges defined on at least three sides by buildings, walls, elements of landscaping, and elements of street furniture, in order to create a strong sense of enclosure.
- R. *Utilities.* All public and semi-public utilities and services, including but not limited to electricity, telephone, cable television, and others, shall be placed underground.
- S. *Enclosed buildings.* Within the CBD, all activities, unless specifically provided for herein, shall be conducted entirely within an enclosed building.

(Ord. of 2-12-2019(3))

ARTICLE XI. - TRANSITIONAL COMMERCIAL DISTRICT (TCD)

Footnotes:

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Editor's note— Ord. of 2-26-2019(1) amended Art. XI in its entirety to read as herein set out. Former Art. XI, §§ 11.01—11.05, pertained to similar subject matter and derived from Ord. of 10-9-2007, § 8; Ord. of 7-7-2009 and Ord. of 2-28-2017.

Sec. 11.01. - Purpose.

The transitional commercial district (TCD) is intended to serve as a buffer between the central business district and other residential or business districts in the city. Its purpose is one of modulation whereby property abutting the CBD may be used for a variety of non-residential uses which are consistent with the objectives of the comprehensive plan. It is intended for areas not suitable for low density residential development and not suited for the policy implications of the central business district,

such as off-street parking. It provides for a mix of low key commercial uses and offices potentially in one building. The TCD may be used to implement the professional office category in the city's comprehensive plan. It also provides for ancillary residential uses which may be a legitimate component in a mixed use area.

(Ord. of 2-26-2019(1))

Sec. 11.02. - Principal permitted uses.

In a TCD, no building, structure or premise shall be erected, altered, or used, except for one or more of the following uses, unless otherwise provided in this ordinance (except that conversions of warehouse or industrial facilities to loft type dwelling units may increase the total number to a maximum of 16).

- A. Apartment buildings, up to a maximum of eight units per building.
- B. Art galleries.
- C. Bed and breakfast inns and homes.
- D. Business establishments which perform services on premises such as, but not limited to: banks, savings and loans and credit unions (excluding drive-through branches); brokerage houses; insurance, real estate, and travel agencies; pedestrian-oriented automated teller machine facilities.
- E. Dry cleaning establishments, or pick-up stations, dealing directly with the consumer. Central dry cleaning plants shall be prohibited.
- F. Essential public services, telephone exchanges, public utility offices, substations and uses when conducted within a completely enclosed building, excluding storage yards, provided the use and building are consistent with the appearance and character of the downtown as determined by the planning commission.
- G. Medical offices including offices of doctors, dentists and similar or allied professions, with up to 10,000 square feet gross floor area.
- H. Mixed-use buildings, with residential and all principle permitted uses as specified by this section subject to the following conditions: Residential units located on the first floor shall be located to the rear of the commercial uses, the units shall not have frontage on any adjacent street and shall be provided a separate, private pedestrian entranceway.
- I. Offices of an executive, administrative or professional nature, with up to 10,000 square feet gross floor area.
- J. Personal service establishments within a completely enclosed building, provided that each occupies a total usable floor area of not more than 4,000 square feet, including, but not limited to, such uses as: repair shops (watches, radio, television, shoes, etc.), tailor and dressmaking shops, beauty parlors and styling salons, barber shops, photographic studios, film processing outlets, copy centers, interior decorators, and postal centers.
- K. Public, quasi-public, and institutional uses such as, but not limited to, municipal buildings and offices, court houses, public off-street parking facilities, libraries, museums, public safety facilities, parks, post offices, and civic centers, but excluding storage yards.
- L. Retail businesses which supply commodities on the premise of up to 10,000 square feet of gross floor area, such as but not limited to: groceries, meats, fruits and produce, dairy products, baked goods, candies, wine (specialty wine shops only) and other specialty food products (such products can be produced on the premises as an accessory use provided they are sold on the site at retail prices); and stores selling drugs, dry goods, flowers, clothing, notions, books and magazines, toys, sporting goods, shoes, tobacco products, musical instruments, recorded music, video rentals and sales, gifts and souvenirs, antiques, furniture, and hardware.
- M. Retail sales in which both a workshop and retail outlet or showroom are required, such as plumbing, electrician,

interior decorating, upholstering, printing, photographic-reproducing, radio, and home appliance and similar establishments of similar character subject to the provision that not more than 80 percent of the total useable floor area of the establishment shall be used for servicing, repairing, or processing activities and further provided that such retail outlet or showroom activities area shall be provided in that portion of the building where the customer entrance is located.

- N. Single-family detached dwellings, provided all requirements for the Traditional Residential District (TRD) are met, except as required in this article herein. The minimum distance between any buildings shall be ten feet. Front yards shall equal the average setback line of the block, as determined by the planning commission, or ten feet. The side yard adjacent to nonresidential property shall be 15 feet. Driveways, parking and walls may be within a side or rear setback.
- O. Studios for art, music, dance, or theatrical instruction.
- P. Accessory buildings and uses customarily incidental to the above permitted uses (i.e., entertainment facilities).
- Q. Group day care home shall have a fenced outdoor play area of at least 1,200 square feet located behind the front building line of the home.

(Ord. of 2-26-2019(1); Ord. of 1-14-2020, § 5)

Sec. 11.03. - Conditional uses.

In the TCD, the following uses shall be considered conditional and require a conditional use permit. Such uses may be permitted subject to applicable site design standards hereinafter imposed and subject further to the conditional use approval procedures of section 2.70, conditional uses in districts:

- A. Senior housing and housing for the elderly.
- B. Party stores.
- C. Other uses not specifically stated or implied elsewhere which, in the determination of the planning commission, are similar to the principal permitted uses provided herein, and in harmony with the character of the district and the purpose and intent of this article and the comprehensive plan of the city.
- D. Funeral homes.
- E. Banks, savings and loans and credit unions with drive-thru lanes meeting the following criteria:
 1. Drive-thru lane must be located in the rear yard.

(Ord. of 2-26-2019(1))

Sec. 11.04. - Development requirements.

Buildings in the TCD should possess architectural variety, but must enhance the overall cohesiveness of the district's character and appearance as determined by the planning commission. Building heights, story levels, window sizes and proportions, architectural features, and building materials must remain consistent with those of existing or adjacent buildings within the immediate vicinity.

Except as otherwise noted, buildings and uses in the TCD shall comply with the following requirements:

- A. *Development plan.* Development plan approval for all uses as specified in article XIX of this ordinance.
- B. *Building placement.* Buildings may be built at lot lines with no setbacks, or the average setback of other buildings on the block as determined by the planning commission. The commission may require greater setbacks if such space, in their determination, is needed for off-street parking or other requirements. The intent of the placement

is to provide for a visual as well as use transition between the CBD and other adjacent districts.

C. *Facade design.* All visible building facades shall conform with the following design criteria:

1. *Architectural features.* Building facades greater than 33 feet in length shall contain architectural features, details and ornaments that are consistent with predominating architectural styles found within the district such as: arches; roof cornices; contrasting bases; contrasting masonry courses, water tables, or molding; pilasters or columns; corbeling; contrasting bands or color; stone or ceramic accent tiles; colonnades; or porches. Elements such as wall clocks, decorative light fixtures, and door or window canopies are recommended. Blank, windowless walls are prohibited.

All non-residential buildings must have interior downspout and gutter systems; exterior downspouts and gutters are not permitted for non-residential buildings, except for those originally constructed for single-family residential purposes.

2. *Fenestration.* All facades visible from the street must contain glazed glass windows. Windows shall be recessed and include visually obvious sills. Spaces between windows shall be formed by columns, mullions, or material found elsewhere on the facade. Clear window glass is recommended; green, blue, bronze, or smoke tints are permitted. Window shapes shall be rectangular, square, or Palladian (mostly rectangular with semi-circular top). Circular, octagonal, or diamond shaped windows are not permitted.
 - a. Glazing on the first floor shall occupy a minimum 60 percent and a maximum of 70 percent of the facade. No glazing on first floor shall be placed less than two feet six inches above the sidewalk. No glazing on the first floor shall be placed more than eight feet above sidewalk.
 - b. Glazing on the second of higher floors shall be a minimum 30 percent and a maximum of 60 percent of the facade.

Vertical window orientation shall have a width-to-height ratio of at least one to two, and shall be consistent with adjacent buildings. Horizontal windows with a width-to-height ratio of between one to one and four to one may be permitted by the planning commission if they determine such window orientation is consistent with the appearance and character of the district.

Shutters, if used, shall be mounted on either side of a window shall be equal to one-half of the width and one times the height.

3. *Building materials.* Building materials must be consistent with the surrounding neighborhood character, as determined by the planning commission. Building materials on the front facade or any facade visible from a public right-of-way must be primarily of natural materials conveying permanence, as determined by the planning commission. Each front facade, any facade visible from a public right-of-way, and any facade with a dedicated public entrance into the building should contain at least 60 percent of the recommended materials listed below, excluding window areas.
 - a. *Recommended materials.* Brick; stone; wood siding; concrete slab (poured-in-place, tilt-up construction).
 - b. *Acceptable materials.* Split face, scored, or ground face block; beveled wood siding (lap, board and batter, shake); exterior insulation finish systems (EIFS).
 - c. *Discouraged materials.* Smooth face block; vinyl siding; metal siding (standing seam panels, aluminum siding); clear and reflective glass; T-111 and other wood panel siding.

Acceptable or discouraged materials, or similar synthetic or highly-reflective materials should not be used except for decorative or accent features only. Exterior insulation finish systems (EIFS) may be used for decorative or accent features, and may also be a primary facade material provided it is placed at a height of

12 feet or greater and provided it is no more than 20 percent of the total facade area, excluding window areas.

4. *Exterior colors.* Exterior colors shall be compatible with the colors on adjacent buildings, subject to review and approval by the planning commission. The following natural colors are encouraged for the main portions of building facades and roof forms: neutral earth tones (sand to brown); shades of gray; traditional colors (e.g., brick red, forest green, navy blue); light, subdued hues (e.g., salmon); or white. Contrasting, accent colors which are compatible with the primary colors listed above are encouraged for trim, accent, and other decorative architectural features. The use of bright or fluorescent colors (e.g., purple, orange, pink, lime, yellow) is discouraged. Colors should be natural to the material or pigmented, and not painted on the material whenever possible.

Proposed colors shall be specified on the development plan. Samples of building materials and colors are required at the time of development plan review for review and approval of the planning commission. Development plan reviews may be tabled for lack of building samples.

- D. *Side or rear facade design.* All sides of a building shall be similar in design, detail, and material to present a cohesive appearance to neighboring properties. Wherever a side or rear facade is visible from a public street, or if parking is located at the side or rear of a building, the facade shall be designed to create a pleasing appearance, in accordance with the following design criteria:
1. Materials and architectural features similar to those present on the front of the building shall be used on the side or rear facade. All visibly exposed sides of a building shall have an articulated base course and cornice. The base course shall align with either the kickplate or sill level of the first floor. The cornice shall terminate or cap the top of a building wall, and may project out horizontally from the vertical building wall plane and may be ornamented with moldings, brackets and other details. The middle section of a building may be horizontally divided at floor, lintel, or sill levels with belt or string courses.
 2. Waste receptacle and service areas shall be completely screened with a decorative masonry wall as approved by the planning commission.
 3. Open areas shall be landscaped with lawn, ground cover, ornamental shrubs and trees. On every site involving new development or redevelopment, foundation plantings adjacent to the building shall be provided.
- E. *Building entrances.* All buildings shall have at least one primary public entrance that faces a public street. Rear entrances are permitted, only if there is a primary entrance from a public street. Main entrances to buildings shall incorporate devices such as canopies, recessed entrance ways, larger door openings and display windows, accent colors, and architectural details such as tile work, moldings, and distinctive door pulls.
1. *Doors.* Doors measuring seven and eight feet high are highly recommended. Doors measuring six feet eight inches high shall have a glass transom with a minimum height of 12 inches.
- F. *Rooflines.* Rooflines shall be consistent with adjacent buildings and the surrounding neighborhood character as determined by the Planning Commission. Flat roofs may be used in the TCD. Distinctively shaped roof forms, detailed parapets, and exaggerated cornice lines shall be incorporated into rooflines along building facades greater than 33 feet. Mansard, mock mansard, or barrel roofs are prohibited.
- Pitched roof forms (gable, hip, shed) with overhanging eaves and between four inches of vertical rise to 12 inches of horizontal run and 12 inches of vertical rise to 12 inches of horizontal run may be used within the TCD if similar rooflines are used on adjacent buildings, or if the planning commission determines such a roof will be consistent with the appearance and character of the district.

- G. *Lighting.* Exterior lighting must be placed and shielded so as to direct the light onto the site, preferably downward and from adjoining properties. The lighting source shall not be directly visible from adjoining properties. Floodlights, wall units, other types of unshielded lights, and lights where the lens is visible outside of the light fixture shall be prohibited where historic-style lighting is used that is compatible with existing historic-style lamps approved by the planning commission.
1. Sidewalks and parking areas shall be properly lit to facilitate the safe movement of pedestrians and vehicles and provide a secure environment. In parking areas, the light intensity shall average a minimum of one foot candle, measured five feet above the surface. Parking lot lighting shall be consistent and/or similar with other fixtures used throughout the district, as determined by the planning commission, and no greater than 20 feet. In pedestrian areas, the light intensity shall average a minimum of two foot candles, measured five feet above the surface.
- H. *Canopies and awnings.* Canopies and awnings shall be permitted on buildings as follows:
1. All awnings must be made from canvas fabric or similar water-proofed material, rather than metal, aluminum, plastic, vinyl, or rigid fiberglass.
 2. All awnings shall be attached directly to the building, rather than supported by columns or poles.
 3. In buildings with multiple storefronts, compatible awnings shall be used as a means of unifying the structure.
- I. *Signs.* Signs for all uses shall be permitted as specified in the Boyne City Sign Ordinance.
- J. *Mechanical equipment.* All units and appliances for air conditioning, HVAC systems, exhaust pipes or stacks, elevator housing and satellite dishes or other telecommunications receiving devices shall be thoroughly screened from view from the public right-of-way and from adjacent properties, by using walls, fences, roofline elements, penthouse-type screening devices or landscaping.
- Fire escapes shall not be permitted on a building's front facade. In buildings requiring a second means of egress pursuant to the local building codes, internal stairs or other routes of egress shall be used.
- Solid metal security gates or solid roll-down metal windows shall be prohibited. Link or grill type security devices shall be permitted only if installed from inside, within the window or door frames; or if installed on the outside, if the coil box is recessed and concealed behind the building wall. Security grills shall be recessed and concealed during normal business hours. Models which provide a sense of transparency by colors, are encouraged. Other security devices fastened to the exterior walls are prohibited.
- K. *Parking and loading.* The planning commission shall determine if specific sites may be parking exempt if the number of off-street parking and loading/unloading spaces required per article XXIV of this ordinance shall be met, or if a lesser number of spaces or no spaces are required due to the following: the availability of on-street parking spaces, off-site parking lots, or municipal parking lots; a finding that patrons will either walk to the site from nearby neighborhoods, or will park at other sites and visit several uses at one time; or the placement and configuration of existing buildings. If required, parking lot design shall comply with the standards below, in addition to the provisions of article XXIV.
1. No new parking lot shall be created nor any existing parking lot expanded in front of a building unless the planning commission determines that parking in front of the building would be acceptable for either of the following reasons:
 - a. Front yard parking is required to maintain the continuity of building setbacks in the block while making efficient use of the site; or
 - b. Front yard parking is required for the purposes of traffic safety and to minimize driveway curb cuts where the new parking lot is proposed to connect with one or more parking lots on adjoining parcels.

If the planning commission determines that a new parking lot must be created or an existing parking lot must be expanded the parking lot shall be located to the rear of buildings, (unless (1)(a) and (b) herein are satisfied), on the interior of the lots, accessed by means of common driveways, preferably from side streets or lanes. Such parking lots shall be small in scale where possible, and interconnected with commercial parking lots on adjacent properties. Cross-access easements for adjacent lots with interconnected parking lots shall be required, in language acceptable to the city attorney. Common, shared parking facilities are encouraged, wherever possible.

2. Parking located in the front or side of a building shall be screened from the road with either: a 36-inch decorative masonry or stone wall; a 48-inch ornamental fence; or a 36-inch evergreen hedge in accordance with article XXIII of this ordinance.
 3. In order to maximize the amount of land area left for landscaping and open space, paving shall be confined to the minimum area necessary to comply with the parking requirements of article XXIV of this ordinance.
 4. Parking lot layout shall take into consideration pedestrian circulation; pedestrian crosswalks shall be provided, where necessary and appropriate, and shall be integrated into the pedestrian network system. Pavement textures shall be required on pedestrian access ways, and strongly encouraged elsewhere in the parking lot, as surfacing materials, or when used as accents.
 5. Any use or site in the TCD required by the planning commission to provide off-street parking may, subject to the approval of city commission, elect to meet such requirement by contributing a fee, as established by the city commission, to a municipal parking fund as defined in section 10.50(M), in lieu of the required off-street parking spaces. This fund shall be used for purchasing land and developing consolidated parking spaces or the development of additional on-street parking in the TCD. The amount of the required fee shall be established by the city and shall be based on anticipated acquisition and development costs.
Contributions may be paid in annual installments, with interest thereon, upon such terms and conditions as may be approved by the city commission. An agreement between the city and the owner or developer, setting forth such terms and conditions in a form approved by the city attorney, shall be executed and deposited with the city clerk. Said agreement shall be recorded and all monies due there under shall be a lien upon the subject property.
 6. Off-street parking spaces under private ownership existing on the date of adoption of this zoning ordinance shall not be converted to another use without the review and approval of the planning commission in accordance with the development plan standards of article XIX of this ordinance.
- L. *Service access.* A service alley or designated loading space shall be reserved at the rear of the building. Loading from secondary streets may be permitted by the planning commission upon demonstration by the applicant that through traffic flow and access to neighboring uses will not be disrupted.
- M. *Landscaping.* Landscaping shall comply with the provisions of article XXIII of this ordinance, in addition to the standards below:
1. On every site involving new development or redevelopment, street trees with a minimum caliper of two-and-a-half inches shall be provided at 25-foot intervals. Any of the following street trees with a minimum caliper of two-and-a-half inches shall be planted within the road right-of-way at 25-foot intervals: Red Maple, Green Ash, Bradford Pear, or Little Leaf Linden, White Ash or Honey Locust, subject to review and approval by the planning commission.
 2. On every site involving new development or redevelopment, a landscape plan shall be submitted for review and approval. The landscape design shall compliment the character of the district.

3. Lots for apartment and non-residential uses shall balance the functional requirements of parking with the provision of pedestrian amenities. Transition areas between parking and civic, commercial or residential uses shall be designed with textured paving, landscaping and street furniture.
- N. *Screening.* Where a new or expanded use occurs in this district, after the effective date of this zoning ordinance, which new or expanded use abuts directly upon a single-family residential district, protective screening shall be provided in accordance with the following standards:

1. A landscaped berm, buffer strip, or greenbelt meeting the requirements of article XXIII of this ordinance shall be provided and maintained along the entire length of a contiguous, single-family residential district. In addition, such sites shall be screened from such contiguous, single-family residential district by either a building housing a permitted use or by a solid masonry wall, ornamental on both sides, and not less than six feet in height above grade, between the required greenbelt area and the use. Such walls shall be constructed of the same materials as that of the main or principal building, and be faced with either brick, decorative block, or pre-cast concrete formed into a decorative pattern and painted in the same color scheme as that of the principal building.

If, in the opinion of the planning commission, the greenbelt would serve no good purpose, the planning commission may waive such requirement and provide only the wall between the contiguous, single-family residential district and the site.

When vehicles, open air displays, waste receptacles, or other features generally exceed a six-foot height, the wall shall be increased to a height adequate to completely screen such features not exceeding ten feet. All such walls shall be of uniform height around the premises and the design of such wall shall be first approved by the planning commission.

2. Where required walls are provided on the business side of public alleys, wall requirements may be waived to provide necessary entrance to or exit from required off-street parking and loading areas, provided the parking area is in mid-block with no possibility for street ingress or egress, and provided, further, that such opening, if approved by the police department, and the planning commission, shall be stepped down to a three-foot level for a minimum of ten feet on each side of the opening.

- O. *Enclosed buildings.* Within the TCD, all activities shall be conducted entirely within an enclosed building.

(Ord. of 2-26-2019(1))

Sec. 11.05. - Additional development requirements.

The following requirements shall be met within a TCD:

- A. Development plan approval for all non-single-family residential uses as specified in article XIX of this ordinance.
- B. Off-street parking, loading, and access management standards for all uses as specified in article XXIV of this ordinance.
- C. Signs for all uses as specified in the Boyne City Sign Ordinance.
- D. Height, area, lot coverage and yard regulations as specified in article XX of this ordinance.
- E. Landscaping requirements as specified in article XXIII of this ordinance.
- F. Design, architectural, and building material standards as specified in article XXII of this ordinance.
- G. Provisions relating to all zoning districts (as applicable in each separate case) as specified in article XXI of this ordinance.

H. The planning commission may also request a preliminary or conceptual review by the DDA or its architectural review committee for development plans adjacent to the CBD.

(Ord. of 2-26-2019(1))

ARTICLE XII. - GENERAL COMMERCIAL DISTRICT (GCD)

Sec. 12.10. - Purpose.

The general commercial district (GCD) is established to accommodate those retail outlets, commercial amusement enterprises, and service-oriented uses which serve the needs of motorists and must, by necessity, be located adjacent to the major highways of the city.

Sec. 12.20. - Principal uses permitted.

In a GCD, no building, structure or premise shall be erected, altered, or used, except for one or more of the following uses, unless otherwise provided in this ordinance:

- A. Any nonresidential principal permitted or conditional use in the central business district (CBD);
- B. Adult daycare and foster care facilities;
- C. Assembly halls;
- D. Automobile, truck, motorcycle, trailer, recreational vehicle or boat, dealerships, either new or used;
- E. Automobile wash facilities;
- F. Automotive fueling stations including those combined with convenience stores of no more than 1,000 square feet; or automotive fueling stations and automobile service centers/stations, without accessory or combined convenience stores; provided any outdoor storage of vehicles is screened in accordance with the standards of section 21.50 [21.56];
- G. Business service establishments, such as office machine and typewriter repair, printing, blueprinting;
- H. Churches, temples, and similar places of worship;
 - I. Commercial greenhouses, nurseries, and garden centers less than 1,000 square feet;
- J. Commercial schools and training centers, including art and dance studios, music and voice schools, and business schools;
- K. Commercial vehicle storage and garages;
- L. Financial services, including banks, savings and loan associations, and credit unions with drive-in or drive-through facilities, subject to the provision of backup or waiting space, apart from required off-street parking areas, at the rate of four car spaces for each service window or pedestal, in addition to the space at the window or pedestal;
- M. (Reserved for future use);
- N. Government buildings and uses;
- O. Household repairs;
- P. Indoor recreation facilities, including bowling alleys, tennis courts, pools, roller and ice skating rinks, dance halls, and other facilities;
- Q. Lumberyards and building supplies;

- R. Physical culture facilities, such as gymnasiums, reducing salons and beauty schools;
- S. Printing and publishing establishments, including newspaper offices and publishers;
- T. Private clubs, lodge halls, and similar assembly buildings;
- U. Public utility buildings and substations;
- V. Rental facilities;
- W. Restaurants, taverns and brewpubs (as defined by the Michigan Liquor Control commission) with up to four billiard tables or other amusement games or devises;
- X. Retail establishments whose principal activity is the sale or rental of merchandise within a completely enclosed building of less than 60,000 square feet of gross floor area, including supermarkets and commercial centers with up to eight different uses;
- Y. Service establishments of an office, showroom or workshop nature, such as a decorator, upholsterer, caterer, exterminator or building contractor, and similar establishments that require retail outlets, except that no outdoor storage of equipment or materials shall be permitted;
- Z. Specialty wine shops;
- AA. Theaters and cinemas;
- BB. Veterinary clinics (excluding the outdoor use of property for pens, boarding, or other similar uses); [and]
- CC. Accessory structures and uses customarily incident to the above permitted uses, including drive-through service windows.

(Ord. of 10-9-2007, § 9(12.20))

Sec. 12.30. - Conditional uses.

The following uses shall be considered conditional uses and require conditional use approval and shall comply with any applicable conditional use requirements of article XXV:

- A. Cocktail lounges and nightclubs, including those with more than four billiard tables or other amusement devises;
- B. Colleges or universities;
- C. Commercial greenhouses, nurseries, and garden centers exceeding 1,000 square feet of floor area;
- D. Drive-in or drive-through restaurants or other drive-in or drive-through establishments serving food and/or beverages;
- E. Mechanical amusement device arcades, pinball parlors and pool or billiard halls;
- F. Mobile home, excavation equipment, machinery or farm implement sales, either new or used;
- G. Open air business uses;
- H. Party stores;
- I. Public, parochial and private schools including nursery schools, churches, temples and similar places of worship, libraries, community buildings, hospitals, convalescent homes and mortuaries;
- J. Public utility transformer stations, substations and gas regulator stations without service or storage yards shall comply with the requirements of this ordinance and shall be subject to the following: a front yard setback of not less than 50 feet shall be provided (irrespective of the yard requirement of the district in which it is located) and two side yards and a rear yard shall be provided, each shall not be less than 25 feet in width. The previously mentioned conditional uses shall be landscaped with a buffer of plant materials that effectively screens the view

of the use from property used for residences and public rights-of-way. The standard buffer shall consist of a landscaped strip at least six feet wide outside the perimeter of the compound. The buffer shall contain a variety of species of plants;

- K. Veterinary hospitals and clinics with outdoor pens, boarding, or other similar uses;
- L. Wholesale stores of less than 60,000 square feet of gross floor area;
- M. Other commercial uses not specifically stated or implied elsewhere which, in the determination of the planning commission, are similar to the principal permitted uses provided herein, and in harmony with the character of the district and the purpose and intent of this article and the comprehensive plan of the city; [and]
- [N. Reserved.]
- O. Funeral homes.

(Ord. of 10-9-2007, § 9(12.30))

Sec. 12.40. - Development requirements.

The following requirements shall be met within a GCD:

- A. Development plan approval for uses as specified in article XIX of this ordinance;
- B. Off-street parking, loading, and access management standards for all uses as specified in article XXIV of this ordinance;
- C. Signs for all uses as specified in the Boyne City Sign Ordinance;
- D. Height, area, lot coverage and yard regulations as specified in article XX of this ordinance;
- E. Landscaping requirements as specified in article XXIII of this ordinance;
- F. Design, architectural, and building material standards as specified in article XXII of this ordinance; [and]
- G. Provisions relating to all zoning districts (as applicable in each separate case) as specified in article XXI of this ordinance.

ARTICLE XIII. - REGIONAL COMMERCIAL/INDUSTRIAL DISTRICT (RC/ID)

Sec. 13.10. - Purpose.

The regulations of this district are set up to provide land for various types of light industrial manufacturing and nonpedestrian oriented commercial uses that are compatible with one another. The lands included in this district are those suited for establishments characterized by automobile access, low land coverage, the absence of objectionable external effects and the possibility of large setbacks and attractive building design.

In this district, each establishment is usually found with its own ingress/egress and automobile parking area; however, combined ingress/egress and parking areas are not altogether excluded. Because of the lack of intense pedestrian activity and the required contact with automobile access, uses permitted in this district must be adaptable to an environment of this nature. All manufacturing establishments shall have performance characteristics similar to those uses listed in the industrial district (ID).

Sec. 13.20. - Principal uses permitted.

In a[n] RC/ID district, no building, structure or premise shall be erected, altered, or used, except for one or more of the following uses, unless otherwise provided in this ordinance:

- A. Any principal permitted use in the general commercial district (GCD) and the industrial district (ID), unless listed as a conditional use herein;
- B. Bars, cocktail lounges and nightclubs, including those with more than four billiard tables or other amusement devices;
- C. Colleges or universities;
- D. Commercial greenhouses, nurseries, and garden centers exceeding 1,000 square feet of floor area;
- E. Drive-in or drive-through restaurants or other drive-in or drive-through establishments serving food and/or beverages;
- F. Mechanical amusement device arcades, pinball parlors and pool or billiard halls;
- G. Party stores;
- H. Retail establishments whose principal activity is the sale or rental of merchandise within a completely enclosed building of less than 80,000 square feet of gross floor area, including supermarkets, hypermarkets, and commercial centers with up to 15 different uses;
- I. Veterinary hospitals and clinics with outdoor pens, boarding, or other similar uses;
- J. Wholesale stores of less than 80,000 square feet of gross floor area;[and]
- K. Accessory structures and uses customarily incidental to the above permitted uses.

Sec. 13.30. - Conditional uses.

The following uses shall be considered conditional uses and require conditional use approval [and] shall comply with any applicable conditional use requirements of article XXV.

- A. Mobile home, excavation equipment, machinery or farm implement sales, either new or used;
- B. Open air business uses;
- C. Public utility transformer stations, substations and gas regulator stations without service or storage yards shall comply with the requirements of this ordinance and shall be subject to the following: a front yard setback of not less than 50 feet shall be provided (irrespective of the yard requirement of the district in which it is located) and two side yards and a rear yard shall be provided, each shall not be less than 25 feet in width. The previously mentioned conditional uses shall be landscaped with a buffer of plant materials that effectively screens the view of the use from property used for residences and public rights-of-way. The standard buffer shall consist of a landscaped strip at least six feet wide outside the perimeter of the compound. The buffer shall contain a variety of species of plants;
- D. Public, parochial and private schools including nursery schools, churches, temples, and similar places of worship, libraries, community buildings, hospitals, convalescent homes and mortuaries;
- E. Other commercial, office, or industrial uses not specifically stated or implied elsewhere which, in the determination of the planning commission, are similar to the principal permitted uses provided herein, and in harmony with the character of the district and the purpose and intent of this article and the comprehensive plan of the city; [and]
- F. Funeral homes.

(Ord. of 10-9-2007, § 10)

Sec. 13.40. - Development requirements.

The following requirements shall be met within the RC/ID district:

- A. Development plan approval for all uses as specified in article XIX of this ordinance;
- B. Off-street parking, loading, and access management standards for all uses as specified in article XXIV of this ordinance;
- C. Signs for all uses as specified in the Boyne City Sign Ordinance;
- D. Height, area, lot coverage and yard regulations as specified in article XX of this ordinance;
- E. Landscaping requirements as specified in article XXIII of this ordinance;
- F. Design, architectural, and building material standards as specified in article XXII of this ordinance; [and]
- G. Provisions relating to all zoning districts (as applicable in each separate case) as specified in article XXI of this ordinance.

ARTICLE XIV. - PLANNED INDUSTRIAL DISTRICT (PID)

Sec. 14.10. - Purpose.

The planned industrial district (PID) is intended to accommodate the industrial needs of the entire community in such a manner that the full range of development opportunities exists in a setting which is compatible and acceptable with surrounding property owners. The further intent of this article is to encourage certain industries which are of a light manufacturing, research, warehousing and wholesaling character to locate in planned areas of the city whose physical effects are restricted to the district and in no manner affect in a detrimental way any of the surrounding districts or uses. The PID is intended for the manufacturing, compounding, processing, packaging, assembly, and/or treatment of finished or semifinished products from previously prepared material. The processing of raw material for shipment in bulk form, or to be used in an industrial operation at another location, are [is] discouraged in the PID. In order that such uses may be integrated with nearby land uses, such as commercial and residential uses, limitations are placed upon the degree of noise, smoke, glare, waste and other features of industrial operations so as to avoid adverse effects.

Sec. 14.20. - Principal permitted uses.

- A. Assembly, fabrication, manufacture, packaging or treatment of food products (excluding butchering and animal slaughtering), candy, pharmaceuticals, drugs, cosmetics and toiletries, hardware and cutlery, musical instruments, optical goods, toys, novelties, electrical instruments and appliances, electronic instruments and devices, electronic consumer products, and pottery and figurines or other ceramic products using only previously pulverized clay and kilns fired only by electricity or natural gas, apparel and leather goods, textile goods, and furniture and fixtures.
- B. Assembly, fabrication, manufacture or treatment of such products from the following previously prepared materials: bone, canvas, cellophane, cloth, cork, felt, fiber, glass, leather, paper, plastics, precious or semiprecious metals or stones, sheet metal (excluding large stampings such as automobile fenders or bodies), shell textiles, wax, wire, wood (excluding power saw and planing mills) and yarns.
- C. Boat manufacturing and repair.
- D. Machine shops; provided that no vibration from the operation shall be perceptible beyond the lot lines of the property on which the shop is located.

- E. Wireless communication facilities.
- F. Tool and die shops; metal working machine shops involving the use of grinding or cutting tools; manufacturing of tools, dies, jigs and fixtures; publishing; printing or forming of box, carton and cardboard products; bookbinding, printing, publishing, reproduction, or engraving establishments.
- G. Industrial printing.
- H. Wholesale distribution plants.
- I. Accessory uses, including but not limited:
 1. Amusement: bowling alley, swimming pool, baseball park, etc. for the use of employees and guests, not for use by the general public.
 2. Service: restaurant, cafeteria, barber, shoeshine parlor, newsstand, motel not for use by the general public.
 3. Lodges and labor organization headquarters, offices and meeting halls.
 4. Residential uses containing only quarters for caretaker or watchman.

Sec. 14.30. - Conditional uses.

The following uses shall be considered conditional and shall require conditional use approval and shall comply with any applicable conditional use requirements of article XXV:

- A. Laboratories for research and testing;
- B. Breweries, distilleries, wineries, bottling works, and microbreweries;
- C. Canning factories and chemical plants;
- D. Electroplating;
- E. Heat treating;
- F. Metalplating, stamping, pressing, casing, buffing and polishing, subject to appropriate measures to prevent obnoxious results and/or nuisances;
- G. Millwork lumber and power saw and planing mills;
- H. Dry cleaning plants (central) and industrial laundries;
- I. Ice manufacturing and storage, including cold storage plants;
- J. Bakeries, wholesale;
- K. Outside storage of materials;
- L. Power plants or central stations;
- M. Steel fabrication;
- N. Carpentry and/or woodworking, open storage of lumber; [and]
- O. Other industrial uses not specifically stated or implied elsewhere which, in the determination of the planning commission, are similar to the principal permitted uses provided herein, and in harmony with the character of the district and the purpose and intent of this article and the comprehensive plan of the city.

Sec. 14.40. - Development requirements.

The following requirements shall be met within a planned industrial district (PID):

- A. Development plan approval for all uses as specified in article XIX of this ordinance;
- B. The site plan shall be reviewed by the Boyne City Economic Development Corporation and/or the local

development finance authority and a written record incorporating its comments shall be transmitted to the planning commission;

- C. Off-street parking, loading, and access management standards, for all uses as specified in article XXIV of this ordinance;
- D. Signs for all uses as specified in the Boyne City Sign Ordinance;
- E. Height, area, lot coverage and yard regulations as specified in article XX of this ordinance;
- F. Landscaping requirements as specified in article XXIII of this ordinance;
- G. Design, architectural, and building material standards as specified in article XXII of this ordinance;
- H. Provisions relating to all zoning districts (as applicable in each separate case) as specified in article XXI of this ordinance;
- I. Wherever a planned industrial district abuts a residentially zoned area, a buffer/screen shall be installed in accordance with article XXIII; [and]
- J. Compliance with all recorded deed restrictions for lots within Phase I and Phase II of the Air Industrial Parks.

ARTICLE XV. - COMMUNITY SERVICE DISTRICT (CSD)

Sec. 15.10. - Purpose.

This district is designed to classify publicly owned lands and to provide adequate space for the development of public and quasi-public uses and services that are critical for the vitality and well-being of residential neighborhoods by preserving such areas already devoted to such uses. These uses include, but are not limited to, schools, parks and playgrounds, open spaces, churches, government facilities, and senior housing. Most of these uses are usually necessary for residential neighborhoods to function properly and should be located within them. However, such uses must adhere to the character and design patterns of the established neighborhoods by emphasizing pedestrian accessibility over automobile accessibility. Some of these uses are incompatible with residential neighborhoods, and should be screened and separated from them.

Sec. 15.20. - Principal permitted uses.

- A. Outdoor public recreational uses, such as: playgrounds; athletic fields and playfields; golf courses and driving ranges; boating areas (marinas and launch sites); fishing sites; camping sites; parkways; recreation centers and community buildings; and parks.
- B. Natural open space such as conservation lands, wetlands, steep slopes, wildlife sanctuaries, woodlands and forest preserves.
- C. Developed open space, such as arboreta, botanical and zoological gardens.
- D. Educational services, such as public primary and secondary schools, and public institutions of higher education.
- E. Cultural services, such as libraries, theaters, performing arts centers, museums and art galleries.
- F. Childcare centers, nursery schools, day nurseries, and adult daycare centers (not including dormitories or any type of overnight care).
- G. Public utility installations, such as: water pumping and treatment plants and reservoirs, sewage treatment plants, telephone exchange buildings, electric transformer stations and substations and gas regulator stations without open storage yards.
- H. Municipal airports.

- I. Municipal and county administration and service buildings.
- J. Cemeteries.
- K. Any use customarily incidental to the permitted principal uses.

Sec. 15.30. - Conditional uses.

The following uses shall be considered and shall require conditional use approval and shall comply with any applicable use requirements of article XXV:

- A. Churches, temples, and similar places of worship;
- B. Parochial and private schools including nursery schools;
- C. Adult education facilities, public or private;
- D. State or federal administrative or service buildings, including but not limited to post offices;
- E. Hospitals and immediate care facilities;
- F. Senior housing and housing for the elderly, including convalescent and nursing homes, and adult foster care group homes and congregate facilities;
- G. Funeral homes; [and]
- H. Other public or quasi-public uses not specifically stated or implied elsewhere which, in the determination of the planning commission, are similar to the principal permitted uses provided herein, and in harmony with the character of the district and the purpose and intent of this article and the comprehensive plan of the city.

(Ord. of 10-9-2007, § 11)

Sec. 15.40. - Development requirements.

The following requirements shall be met within a CSD:

- A. Development plan approval for all uses as specified in article XIX of this ordinance;
- B. Off-street parking, loading, and access management standards, for all uses as specified in article XXIV of this ordinance;
- C. Signs for all uses as specified in the Boyne City Sign Ordinance;
- D. Height, area, lot coverage and yard regulations as specified in article XX of this ordinance;
- E. Landscaping requirements as specified in article XXIII of this ordinance;
- F. Design, architectural, and building material standards as specified in article XXII of this ordinance;
- G. Approval of the parks and recreation commission;
- H. Conformance to Avalanche Management Plan, where applicable; [and]
- I. Provisions relating to all zoning districts (as applicable in each separate case) as specified in article XXI of this ordinance.

ARTICLE XVI. - FLOOD HAZARD DISTRICT (FHD)

Sec. 16.10. - Purpose.

It is the purpose of this article to significantly reduce hazards to persons and damage to property as a result of flood conditions in Boyer City, and to comply with the provisions and requirements of the National Flood Insurance Program, as constituted in accord with the National Flood Insurance Act of 1968, as amended, and subsequent enactments and the rules and regulations promulgated in furtherance of this program by the United States Department of Housing and Urban Development, Federal Insurance Administration, as published in the Federal Register, Vol. 41, No. 207, Tuesday, October 26, 1976, and redesignated as 44 FR 31177, May 31, 1979.

A. Further, the objectives of this article include:

1. The protection of human life, health and property from the dangerous and damaging effects of flood conditions;
2. The minimization of public expenditures for flood control projects, rescue and relief efforts in the aftermath of flooding, repair of flood damaged public facilities and utilities, and the redevelopment of flood damaged homes, neighborhoods, commercial and industrial areas;
3. The prevention of private and public economic loss and social disruption as a result of flood conditions;
4. The maintenance of stable development patterns, not subject to the blighting influence of flood damage;
5. To ensure that the public has access to information indicating the location of land areas subject to periodic flooding; and
6. To preserve the ability of floodplains to carry and discharge a base flood.

Sec. 16.20. - Delineation of the flood hazard area overlay zone.

- A. The flood hazard zone shall overlay existing zoning districts delineated on the official Boyer City Zoning Map. The boundaries of the flood hazard zone shall coincide with the boundaries of the areas of special flood hazards (A zones) and areas indicated as within the limits of the 100-year flood area designated by the Federal Insurance Administration in the Flood Insurance Study, dated January 19, 1982, with accompanying flood insurance rate maps and flood boundary and floodway maps, and amendments thereto, which are adopted by reference, appended, and declared to be a part of this ordinance. The term flood hazard area as used in this ordinance shall mean the flood hazard area zone.
- B. Where there are disputes as to the location of a flood hazard area zone boundary, the zoning board of appeals shall resolve the dispute.
- C. In addition to other requirements of this ordinance applicable to the development in the underlying zoning district, compliance with the requirements of this section shall be necessary for all development occurring within the flood hazard area zone. Conflicts between the requirements of this section and other requirements of this ordinance or any other ordinance shall be resolved in favor of this section, except where the conflicting requirement is more stringent and would further the objectives of this section to a greater extent than the requirements of this section. In such cases, the more stringent requirement shall be applied.

Sec. 16.30. - Development/permit.

- A. Development, including the erection of structures and placement of mobile homes, within a flood hazard area shall not occur except upon issuance of a zoning permit in accord with the requirements of this ordinance and the following standards:

The word "development," as used in this section, shall mean any manmade change to improve or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

1. The requirements of this section shall be met.
2. The requirements of the underlying zoning district and applicable general provisions of this ordinance must be met.
3. All necessary development permits shall have been issued by appropriate local, state and federal authorities including a floodplain permit, approval, or letter of no authority from the Michigan Department of Environmental Quality under authority of Act 245, Public Acts of 1929, as amended by Act 167, Public Acts of 1968 [(MCL 324.3101 et seq.)]. Where a development permit cannot be issued prior to the issuance of a zoning permit, a letter from the issuing agency indicating intent to issue contingent only upon proof of zoning compliance shall be acceptable.
4. General standards for flood hazard reduction.
 - a. All new construction and substantial improvements within a flood hazard area, including the placement of prefabricated buildings and mobile homes, shall:
 - 1) Be designed and anchored to prevent flotation, collapse, or lateral movement of the structure;
 - 2) Be constructed with materials and utility equipment resistant to flood damage; and
 - 3) Be constructed by methods and practices that minimize flood damage.
 - b. All new and replacement water supply systems shall minimize or eliminate infiltration of flood waters into the systems.
 - c. All new and replacement sanitary sewage systems shall minimize or eliminate infiltration of flood waters into the systems and discharges from systems into flood waters. On-site waste disposal systems shall be located to avoid impairment to the system or contamination from the system during flooding.
 - d. All public utilities and facilities shall be designed, constructed and located to minimize or eliminate flood damage.
 - e. Adequate drainage shall be provided to reduce exposure to flood areas.
 - f. Development plans shall be reviewed in accordance with this ordinance to determine compliance with the standards in this ordinance. The planning director or his representative shall review development proposals to determine compliance with the standards of this section.
 - g. Land shall not be divided in a manner creating parcels or lots which cannot be used in conformance with the requirements of this section.
 - h. The flood carrying capacity of any altered or relocated watercourse not subject to state or federal regulations designed to insure flood-carrying capacity shall be maintained. If any alteration or relocation of any watercourse shall be proposed, then prior thereto, the person proposing same shall notify adjacent communities (and the state coordinating agency) prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
 - i. Available flood hazard data from federal, state or other sources shall be reasonably utilized in meeting the standards of this section. Data furnished by the Federal Insurance Administration shall take precedence over data from other sources.
5. Specific base flood elevation standards.
 - a. On the basis of the most recent available base flood elevation data the following standards shall apply in the

flood hazard area zone:

- 1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to or above the base flood level;
 - 2) All new construction and substantial improvements of nonresidential structures shall have either: the lowest floor, including basement, elevated to or above base flood level; or be constructed such that below base flood level, together with attendant utility and sanitary facilities, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subparagraph are satisfied, and that the floodproofing methods employed are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with a base flood in the location of the structure. Such certification shall be submitted as provided and shall indicate the elevation to which the structure is floodproofed.
- b. The most recent base flood elevation data received from the Federal Insurance Administration shall take precedence over data from other sources.
6. Manufactured housing standards.
- a. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties in accord with the following specifications:
 - 1) Over-the-top ties shall be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations, except that on mobile homes less than 50 feet in length one tie per side shall be required;
 - 2) Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points, except that on mobile homes less than 50 feet in length, four ties per side shall be required;
 - 3) All components of the anchoring system shall be capable of carrying a force of 4,800 pounds; [and]
 - 4) All additions to a mobile home shall be similarly anchored.
 - b. An evacuation plan indicating alternate vehicular access and escape routes shall be filed with the appropriate authority for mobile home parks and mobile home subdivisions.
 - c. Manufactured homes shall be anchored in accordance with section C.1.f.
 - d. For new manufactured home parks and mobile home subdivisions; for expansions to existing manufactured home parks and manufactured home subdivisions; for existing manufactured home parks and manufactured home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50 percent of value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced; and for manufactured homes not placed in a manufactured home park or manufactured home subdivision, require that:
 - 1) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the manufactured home will be at or above the base flood level;
 - 2) Adequate surface drainage and access for a hauler are provided; and
 - 3) In the instance of elevation on pilings, that: lots are large enough to permit steps; piling foundations are placed in stable soil no more than ten feet apart; and reinforcement is provided for pilings more than six feet above the ground level.
 - e. No manufactured home shall be placed in a floodway, except in an existing mobile home park or an existing

mobile home subdivision.

7. Disclaimer of liability.

- a. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based upon engineering and scientific methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes such as ice jams and bridge openings restricted by debris. Approval of the use of land under this article shall not be considered a guarantee or warranty of safety from flood damage.

This ordinance does not imply that areas outside the flood hazard area will be free from flood damage. This ordinance does not create liability on the part of Boyne City or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

8. Obstruction of floodways. Located within areas of special flood hazard established in section B.1. are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- a. Encroachments are prohibited, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrated that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharges.
- b. If the preceding section (8)(a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this ordinance and the city's Code of Ordinances.

9. Filling and dumping. Dredging and filling and/or dumping or backfilling with any material in any manner is prohibited unless through compensating excavation and shaping of the floodplain, the flow and impoundment capacity of the floodplain will be maintained or improved, and unless all applicable federal, state, and city regulations are met including, but not limited to: approvals pursuant to P.A. 245 of 1929, as amended by P.A. 167 of 1968 [MCL 324.3101 et seq.], P.A. 347 of 1972 [MCL 324.9101 et seq.], as amended; P.A. 346 of 1972 [MCL 324.30101 et seq.], as amended; and P.A. 203 of 1979 [MCL 324.30101 et seq.], as amended.

Sec. 16.40. - Principal permitted uses.

Within the flood hazard area overlay zone, no land shall be used except for one or more of the following uses:

- A. Parks, picnic areas, playgrounds, playfields, athletic fields, golf courses, other outdoor recreational uses, nature paths, and trails;
- B. Wildlife preserves;
- C. Fishing, trapping, and hunting in compliance with current laws and regulations;
- D. Historic sites and structures;
- E. Fishing and boating docks in accord with the provisions of the inland Lakes and Streams Act of 1972 [MCL 324.30101 et seq.], as amended;
- F. Landscaping, screening, and required open space or lot area for structural uses that are landward of the overlay zone;
- G. Accessory buildings, structures and uses:
 1. Within the flood hazard area overlay zone, no building or structure shall be used except for one or more of the following uses and only in a manner consistent with the requirements of principal uses and accessory buildings, structures and uses in the underlying district, and with those that follow; [and]
 2. The following accessory buildings, structures and uses are permitted: off-street parking, streets, roads, and

bridges; outdoor play equipment, sheds and garages; boathouses, boat hoists, utility lines, and pumphouses; bleachers; bank protection structures; signs; fences; gazebos; and similar outdoor equipment and appurtenances; provided each of the following requirements are met:

- a. The building or structure would not cause an increase in water surface elevation, obstruct flow, or reduce the impoundment capacity of the floodplain;
- b. All equipment, buildings and structures shall be anchored to prevent flotation and lateral movement; [and]
- c. Compliance with these requirements is certified by an engineering finding by a registered engineer.

Sec. 16.50. - Conditional uses.

- A. Churches, temples, and similar places of worship.

Sec. 16.60. - Floodplain management administrative duties.

- A. With regard to the National Flood Insurance Program, and the regulation of development within the flood hazard area overlay zone as prescribed in this section, the duties of the planning director shall include, but are not limited to:
 1. Notification to adjacent communities and the Michigan Department of Natural Resources or the Michigan Department of Environmental Quality of the proposed alteration or relocation of any watercourse, and the submission of such notifications to the Federal Insurance Administration; [and]
 2. Recording of written notification to all applicants to whom variances are granted in a flood hazard area overlay zone indicating the terms of the variance, the potential increased danger to life and property, and that the cost of flood insurance will increase commensurate with the increased flood risk. A record of all variance notifications and variance actions shall be maintained together with the justification for each variance.
- B. All records and maps pertaining to the National Flood Insurance Program shall be maintained in the office of the planning director and shall be open for public inspection.
- C. It shall be the responsibility of the planning director to obtain and utilize the best available flood hazard data for purposes of administering this section in the absence of data from the Federal Insurance Administration.

Sec. 16.70. - Flood hazard area overlay zone mapping disputes.

- A. Where disputes arise as to the location of the flood hazard area boundary or the limits of the floodway, the board of appeals shall resolve the dispute and establish the boundary location. In all cases, the decision of the board of appeals shall be based upon the most current floodplain studies issued by the Federal Insurance Administration. Where Federal Insurance Administration information is not available, the best available floodplain information should be utilized.
- B. Where a dispute involves an allegation that the boundary is incorrect as mapped and Federal Insurance Administration floodplain studies are being questioned, the board of appeals shall modify the boundary of the flood hazard area or the floodway only upon receipt of an official letter of map amendment issued by the Federal Insurance Administration.
- C. All parties to a map dispute may submit technical evidence to the board of appeals.

Sec. 16.80. - Flood hazard area overlay zone variances.

- A. Variances from the provisions of this section shall only be granted by the board of appeals upon a determination of

compliance with the general standards for variances contained in this section and each of the following specific standards:

1. A variance shall be granted only upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. A determination that the granting of a variance will not result in a harmful increase in flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
 2. The variance granted shall be the minimum necessary, considering the flood hazard, to afford relief to the applicant.
- B. The board of appeals may attach conditions to the granting of a variance to ensure compliance with the standards contained in this section.
- C. Variances may be granted for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Michigan Register of Historic Sites, or any other state register of historic places without regard to the requirements of this section governing variances in flood hazard areas.

ARTICLE XVIII. - OPEN SPACE COMMUNITY OPTION

Sec. 18.10. - Intent.

The purpose of an open space community is to maintain the rural, natural and scenic qualities of Boyne City. Toward this end, all open space community developments shall be designed to promote the preservation and protection of natural features, significant wildlife habitats, sensitive environmental lands and scenic vistas. The provisions set forth in this article encourage innovative and livable residential neighborhoods through permanent dedication of open space, where the overall density may be increased, but remains generally the same as would be found in a traditional development with the underlying zoning.

Increasing suburban development of rural areas has produced a need for more environmentally sensitive and cost efficient residential development. This article meets this need as dwelling units are grouped or clustered onto part of the parcel so the remaining acreage can be permanently preserved as open space.

The intent of this article is to offer an alternative to traditional residential developments and subdivisions through the use of planned unit development legislation that results in an enhanced living environment through the permanent preservation of open and rural landscapes for the following purposes:

- A. Encouraging the use of land in accordance with its character and adaptability;
- B. Providing more environmentally sensitive residential developments by assuring the permanent preservation of open space, woodlands, wetlands, natural topography and other natural resources;
- C. Preserving the rural landscape and protecting environmentally sensitive lands from the disruptive effects of traditional subdivision development;
- D. Providing open spaces and/or recreational facilities within a reasonable distance of all residents of open space communities;
- E. Encouraging the provision of open space of a reasonable size to provide a more efficient and aesthetic use of open space;

- F. Helping promote longterm preservation of wetlands by promoting ownership by an association rather than individual owners;
- G. Allowing innovation and greater flexibility in the design of residential developments by permitting modifications to dimensional requirements of this ordinance;
- H. Facilitating the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
- I. Ensuring compatibility of design and use between neighboring properties and a generally consistent density with that permitted in the underlying zoning district; [and]
- J. Encouraging a less sprawling form of development, thus permanently preserving open space as undeveloped land.

These overlay development regulations are intended to preserve a traditional rural character to the land use pattern in Boyer City through the creation of small residential groups or clusters contrasting with open space and less intensive land uses. These regulations are further intended to provide flexibility in certain zoning ordinance requirements to preserve natural features and open space which might be lost through more traditional subdivision development in residential districts. These standards are not intended as a device for ignoring or circumventing the zoning or subdivision regulations of the city, the standards set forth therein, nor the planning concepts upon which the zoning ordinance has been based. These standards are intended to result in a specific development substantially consistent with this ordinance, yet allow for modifications from the general standards to insure appropriate, fair, and consistent decisionmaking.

Sec. 18.20. - Establishment of overlay district.

The open space community option is established as an overlay district with the underlying zoning remaining in place, and shall be available by right for condominium developments, platted subdivisions, and land divisions in all single-family residential districts, or in other residential zoning districts in which the planning commission determines open space conservation is a primary consideration. Development permitted under this article shall be considered as an option to the development otherwise permitted in the applicable zoning districts, and shall be mutually agreeable to both the applicant and/or developer and the city.

Sec. 18.30. - Definitions.

For the purposes of this article, the terms enumerated in this section shall be defined as follows:

- A. *Adjusted parcel acreage.* Net parcel area after the primary conservation area has been deducted from the gross parcel area. The adjusted parcel acreage is the figure upon which density calculations are based.
- B. *Open space.* The combined area of primary and secondary conservation areas within an open space community, not individually owned, which is designed and intended to conserve environmental features for the common use or enjoyment of the residents of the development or the public. Such open space may contain accessory structures and improvements appropriate for recreational purposes, as provided by this article.
- C. *Open space community.* A predominately single-family residential development in which dwelling units are placed together into one or more groups or clusters within a defined project area, where the dwelling units are separated from adjacent properties or other groups or clusters of dwellings by substantial open space that is perpetually protected from development, whereby the preservation of primary and secondary conservation areas is emphasized as the basis for grouping or clustering dwelling units.
- D. *Primary conservation area.* Sensitive environmental features that are deducted from the gross parcel acreage to

produce the adjusted parcel acreage. Lands to be deducted include wetlands, water bodies and inundated lands (lakes, ponds, streams, drains), lands within a 100-year floodplain, natural drainage ways, and rolling topography and slopes exceeding 12 percent grade.

- E. *Secondary conservation area.* Natural or cultural features including, but not limited to, mature woodlands, individual trees over six-inch diameter (measured at diameter breast height), aquifer recharge areas, wildlife habitat areas, historic sites, prime farmland, and/or scenic views or vistas from public rights-of-way designated for conservation.

Sec. 18.40. - Eligibility criteria.

To be eligible for open space community consideration, the applicant must present a proposal for residential development that meets each of the following criteria:

- A. *Recognizable benefits.* An open space community shall result in a recognizable and substantial benefit, both to the residents of the property and to the overall quality of life in the city. The benefits can be provided through site design elements in excess of the requirements of this ordinance, such as high quality architectural design, extensive landscaping, transition areas from adjacent residential land uses, unique site design features, unified access, preservation of primary and secondary conservation areas, particularly along major thoroughfares, and buffering developments from lakes, rivers, streams and wetlands. This benefit should accrue, in spite of any foreseeable detriments of the proposed development.
- B. *Minimum project size.* The minimum size of an open space community development shall be five acres of contiguous land. The planning commission may consider development of a site less than five acres as an open space community; provided that the parallel plan shall be prepared at the existing zoning minimum lot size, and there shall be no density bonus for sites less than five acres. The parcel depth shall not exceed three times the width of the parcel. The parcel shall have a minimum frontage of 250 feet.
- C. *Open space and natural features.* The proposed development shall contain a minimum 25 percent of the total site area designated as permanent open space containing one or more of the following open space benefits:
1. *Significant natural assets.* The site contains significant primary and/or secondary conservation areas or other natural assets which would be in the best interest of the city to preserve and which might be negatively impacted by conventional residential development. Determination of significance shall be based upon a combination of factors including soil type, topography, existing vegetation and habitat, historic use of land, size of the site, use of land for agricultural purposes and character of the surrounding area. This determination shall be made by the planning commission after review of a site analysis plan, prepared by the applicant, that inventories these features.
 2. *Recreation facilities.* The development will preserve an existing recreation facility or provide usable recreation facilities to which all residents of the development shall have reasonable access. Such recreation facilities include areas such as a neighborhood park, passive recreational facilities, athletic fields, bicycle paths, playgrounds, or similar facilities which provide a feature of communitywide significance and enhance residential development.
- D. *Unified control.* The proposed development shall be under single ownership or control, such that there is a single person or entity having proprietary responsibility for the full completion of the project. The applicant shall provide sufficient documentation of ownership or control in the form of agreements, contracts, covenants, and/or deed restrictions that indicate that the development will be completed in its entirety as proposed.
- E. *Guarantee of open space.* The applicant shall guarantee through a legal instrument acceptable to the planning

commission (e.g., master deed or conservation easement) that all open space portions of the development will be maintained in the manner approved. Documents shall be presented that bind all successors and future owners in fee title to commitments made as a part of the proposal. This provision shall not prohibit a transfer of ownership or control; provided notice of such transfer is provided to the city and the land uses continue as approved in the open space community plan.

- F. *Cohesive neighborhood.* The proposed development shall be designed to create a cohesive neighborhood through common open space areas for passive and/or active recreation and resident interaction. All open space areas shall be equally available to all residents of the open space community.
- G. *Density impact.* The proposed type and density of use shall not result in an unreasonable increase in the need for or impact upon public services, facilities, streets, and utilities in relation to the use or uses otherwise permitted by this ordinance, and shall not place an unreasonable impact upon the subject site and surrounding land, surrounding property owners and occupants, and/or the natural environment. The planning commission may require that the applicant prepare an impact statement documenting the significance of any environmental, traffic, utility, or social-economic impacts resulting from the proposed open space community. Such an impact statement shall be a quantitative comparison of the impacts of both conventional development and the open space community plan (such as an overlay of conceptual development plans, on a natural features map, illustrating other site development options to demonstrate the impacts have been minimized to the extent practical). An unreasonable impact shall be considered an unacceptable significant adverse effect on the quality of the surrounding community and the natural environment in comparison to the impacts associated with conventional development.
- H. *Comprehensive plan.* The proposed development shall be consistent with and further the implementation of the city's comprehensive plan, and any subsequent amendments thereto.

Sec. 18.50. - Project design standards.

A proposed open space community shall be reviewed and approved in accordance with the development plan review procedures of this ordinance as contained in article XIX and must comply with the following project design standards:

- A. *Plan preparation.* An open space community plan shall be prepared using the four-step design process described herein.
 1. *Designate open space.* Outline the primary and secondary conservation areas within and surrounding the proposed site.
 2. *Layout dwelling unit sites.* Designate the tentative location of potential dwelling unit sites.
 3. *Layout streets, thoroughfares, and pathways.* Align proposed streets, thoroughfares, and pathways to provide vehicular access to each dwelling unit site in a manner that minimizes impacts on primary and secondary conservation areas.
 4. *Layout lot lines.* Divided the dwelling unit sites into lots.
- B. *Location.* An open space community may be approved upon any rural estate district (RED), traditional residential district (TRD), or in any other residential zoning districts in which the planning commission determines open space conservation is a primary consideration.
- C. *Permitted uses.*
 1. Single-family detached residential dwelling units or residential buildings with up to four attached units are permitted, provided attached dwellings shall number no more than 25 percent of the total number of dwelling units.

2. Agriculture, horticulture, or floriculture excluding farm-based agribusinesses, concentrated animal feeding operations, livestock raising operations, stables, or veterinary hospitals or clinics.
 3. Accessory uses and buildings incidental to the principal permitted uses including recreational activities which are passive and occur on common open space lands only.
 4. In projects that qualify under the standards herein, a multiple-family component may be allowed by the planning commission, subject to the requirements of this article.
- D. *Water and sewer service.* If there is public water or sanitary sewer service available to the site on which an open space community development is proposed, the planning commission shall require connection into the system.
- E. *Base zoning regulations.* Consistent with the intent and procedures of this article, modifications to the dimensional requirements of this ordinance may be granted upon a specific request by an applicant. Unless specifically modified by the planning commission, the balance of all zoning ordinance requirements for the underlying zoning district, except for minimum lot area and minimum yard setbacks as stated herein, and other city ordinances shall remain in full force.
- F. *Open space requirements.* Open space shall be comprised of primary and secondary conservation areas. Primary conservation areas are predetermined by the location of unbuildable lands as defined herein. Secondary conservation areas shall be guided by the maps and policies of the natural features, open space or recreation elements of the city's comprehensive plan.
1. All land within a development that is not devoted to a residential dwelling, an accessory use, vehicular access or parking, a street, or an approved land improvement shall be set aside as common open space land for recreation, conservation, agricultural uses, or preserved in an undeveloped state. Grading in the open space shall be minimal, with the intent to preserve existing topography where practical.
 2. An open space community shall maintain a minimum of 25 percent of the gross area of the site as dedicated open space held in common ownership. The cumulative total of acreage within the 100-year floodplain may not account for more than 50 percent of the required open space area. Except as noted in this article, any undeveloped land area within the boundaries of the site meeting the open space standards herein may be included as required open space.
 3. If a site contains secondary conservation areas, a minimum of 20 percent of the adjusted parcel area, after deducting the primary conservation areas, shall remain as secondary conservation areas.
 4. At least 20 percent of the open space area shall be suitable for active recreation purposes, but no more than 50 percent of the open space shall be utilized for that purpose.
 5. Secondary conservation areas shall provide an upland buffer of natural native species of at least 25 feet adjacent to wetlands and surface waters, including lakes, ponds and natural drainage ways.
 6. Stormwater management ponds may be included and/or constructed within the open space area.
 7. Areas not considered open space. The following land areas are not included as dedicated open space for the purposes of this article:
 - a. The area of any street right-of-way proposed to be dedicated to the public and access easements for private streets or underground utilities. This provision shall not preclude the future dedication of a private street access easement to a public street agency;
 - b. Any submerged land area, open bodies of water, and detention basins;
 - c. Any area devoted to natural or improved flood control channels, or those areas encumbered by floodway or drain easements;

- d. State or federally regulated wetlands;
- e. The required setbacks surrounding a residential structure that is not located on an individual lot or condominium site; [and]
- f. Parking and loading areas.

Except as noted above, any undeveloped land area within the boundaries of the parcel may be included as required open space.

- 8. Connections with adjacent open spaces, public parks or other lands, or existing and/or planned pedestrian/bicycle paths may be required by the planning commission.
 - 9. Further subdivision of open space lands, or their use for other than recreation, conservation or agriculture shall be prohibited.
- G. *Open space location and size.* Open space areas may either be centrally located, along the street frontage of the development, located to preserve primary or secondary conservation areas, or located to connect open spaces throughout the development. The open space location shall meet one or more of the following standards:
- 1. The open space is provided along the public street right-of-way to provide additional buffering from the traffic and enhance views from the street, provided the open space along such right-of-way shall generally have a depth of at least 50 feet, either preserved in a natural wooded condition, or landscaped with a minimum of one evergreen tree with a minimum height of six feet, and one canopy tree with a minimum caliper of 2½ inches (d.b.h.) for each 20 feet of street frontage. Such plantings shall be planted in staggered rows or clustered into groupings to provide a natural appearance. Preservation of existing trees may be credited towards meeting the frontage landscaping requirement.
 - 2. The open space provides an ecological link to permanent open space in surrounding lands, or is located to connect open spaces, public parks, or bicycle/pedestrian paths throughout the community.
 - 3. The open space is designed and located to be centrally positioned or in close proximity to all or most of the dwelling units, and is directly accessible to the largest practical number of lots or parcels within the development.
 - 4. The open space preserves sensitive environmental feature areas or significant natural features in a natural state and adequately protects them as nature preserves or limited access areas.

Where open space is held in noncontiguous parcels, no open space area shall consist of less than one-half acre or have a length to width ratio of greater than four to one. Exceptions to this requirement shall include areas specifically designed as trail links, wetland and water body buffers, active recreation facilities or formal community spaces such as village greens or commons.

- H. *Guarantee of open spaces.* The dedicated open space shall be set aside by the developer through an irrevocable conveyance that is found acceptable to the city, such as recorded deed restrictions, covenants that run perpetually with the land, or a conservation easement established per the State of Michigan Conservation and Historic Preservation Act, Public Act 197 of 1980, as amended (MCL 399.251). Such conveyance shall ensure that the open space will be protected from all forms of development, except as shown on an approved development plan, and shall never be changed or converted to another use. Such conveyance shall provide for the following:
- 1. Indicate the proposed allowable uses of the dedicated open space. The planning commission may require the inclusion of open space restrictions that prohibit:
 - a) Dumping or storing of any material or refuse;
 - b) Activity that may cause risk of soil erosion or threaten any living plant material;

- c) Cutting or removal of live plant material except for removal of dying or diseased vegetation;
 - d) Use of motorized off-road vehicles;
 - e) Cutting, filling or removal of vegetation from wetland areas; and/or
 - f) Use of pesticides, herbicides or fertilizers within or adjacent to wetlands.
2. Require that the dedicated open space be maintained by parties who have an ownership interest in the open space.
 3. Provide standards for scheduled maintenance of the open space.
 4. Provide for maintenance to be undertaken by the city in the event that the dedicated open space is inadequately maintained, or is determined by the city to be a public nuisance, with the assessment of costs upon the property owners.
- I. *Continuing obligation.* The dedicated open space shall forever remain open space, subject only to uses approved by the city on the approved site plan. Further subdivision of open space land or its use for other than recreation, conservation or agricultural purposes, except for easements for utilities and septic systems, shall be strictly prohibited.
- J. *Allowable and existing structures.* Any structure or building accessory to a recreation, conservation or agriculture use, excluding parking lots, may be erected within the dedicated open space, subject to approval by the planning commission. These accessory structure or building shall not exceed, in the aggregate, one percent of the required open space area. When a tract contains structures or buildings deemed to be of historic, cultural or architectural significance, as determined by the planning commission, and if suitable for rehabilitation, the structures shall be retained. Adaptive reuse of existing structures for residential use or permitted accessory residential uses shall be permitted. Accessory structures or uses of a significantly different scale or character than the abutting residential district shall not be located near the boundary of the development if it may negatively impact the residential use of adjacent lands as determined by the planning commission.
- K. *Dwelling density.* The permitted density of residential uses within an open space community shall not exceed the density allowed by the underlying residential zoning district as stated in article XX, schedule of regulations; provided the planning commission may allow an increase in density of up to 20 percent upon a determination that primary and secondary conservation areas will be preserved that would not be preserved under a more traditional development design and that the open space meets the standards of this article. The planning commission may utilize criterion or guidelines to determine whether a density bonus should be allowed and the percentage of the density bonus. Primary conservation areas, rights-of-way, private street access easements, and parking and loading areas shall not be used to calculate maximum permitted density.
1. *Density calculation; parallel or yield plan option.* The maximum number of dwelling units permitted within an open space community shall be determined through preparation of a parallel or yield plan. A parallel or yield plan illustrates how many dwelling units could be feasibly and practically established in proposed area with a traditional subdivision plan meeting the dimensional requirements of the underlying zoning district and the design standards of the city's subdivision and site condominium regulations.

The parallel or yield plan shall be prepared with the minimum lot areas as required per each applicable zoning district. The parallel or yield plan is only used to determine allowable density for an open space community project.

The applicant shall prepare, and present to the planning commission for review, a parallel or yield plan or design for the project that depicts a conventional lot and street layout and is consistent with state, county and city requirements, including standards and design criteria for a tentative preliminary plat. The parallel or yield plan shall:

- a. Meet all standards for lot size, lot width and setbacks as normally required under this zoning ordinance, and improvements and private parks;
- b. Have demonstrated soil suitability for individual septic systems, if required, and
- c. Contain an area, which conceptually would provide sufficient area for stormwater detention.

Lots in the parallel or yield plan shall provide sufficient building envelope size without impacting wetlands regulated by the Michigan Department of Environmental Quality. Primary conservation areas shall be depicted on the parallel or yield plan and excluded from the layout of conventional lots. This design shall include all information as required by the guidelines adopted by the planning commission pursuant to this article.

The planning commission shall review the design and determine the number of lots that could be feasibly constructed and be economically viable following the parallel plan. This number, as determined by the planning commission, shall be the maximum number of dwelling units allowable for the open space community. The planning commission may grant a density bonus of up to 20 percent for exemplary projects that meet the conditions outlined in this article.

2. *Density calculation; yield formula option.* The number of dwelling units permitted within an open space community shall be determined through the calculation of a yield formula. The yield formula shall be calculated based upon gross parcel area minus the primary conservation areas, land occupied by permanent easements that restrict construction (utility transmission, access, drainage) and land required for rights-of-way (25 percent of the buildable site area). The resulting acreage shall be divided by the minimum lot area (or average density) permitted in the zoning district to establish the maximum number of permitted dwelling units within the open space community. The planning commission may grant a density bonus of up to 20 percent for exemplary projects that meet the conditions outlined in this article.

L. *Regulatory flexibility.*

1. To encourage flexibility and creativity consistent with the open space community concept, the planning commission may grant specific departures from the requirements of this ordinance for yard, lot, and bulk standards as a part of the approval process provided that such modification results in enhanced buffering from adjacent land uses or public rights-of-way, or further preservation of natural features.
2. Any regulatory modification shall be approved through a finding by the planning commission that the deviation shall result in a higher quality of development than would be possible using conventional zoning standards. Regulatory modifications are not subject to variance approval of the zoning board appeals. No part of an open space community plan may be appealed to the zoning board appeals. Any deviation of an approved plan shall require approval from the planning commission. This provision shall not preclude an individual lot owner from seeking a variance following final approval of the open space community, provided such variance does not involve alterations to open space areas as shown on the approved open space community development plan.
3. A table shall be provided on the development plan which specifically details all deviations from the requirements of this ordinance, including area, height and setback regulations, off-street parking regulations, general provisions, or subdivision regulations which would otherwise be applicable to the uses and development proposed in the absence of this article. This specification should include zoning ordinance provisions from which deviation are sought, and the reasons and mechanisms to be utilized for the protection of the public health, safety, and welfare in lieu of the regulations from which deviations are sought. Only those deviations consistent with the intent of this ordinance and the city's comprehensive plan shall be considered.

4. The total area of dedicated open space shall equal or exceed any reduction in area for minimum lot sizes.
- M. *Access.* Direct access onto either a city street, or county or state road designated as an arterial or thoroughfare within the city's comprehensive plan or a state highway shall be required for an open space community. The nearest edge of any entrance or exit drive shall be located no closer than 100 feet from any existing street or street intersection (as measured from the nearest intersection right-of-way line). Open space communities shall also meet or exceed the access management standards contained in this ordinance or other ordinances of the city.
- N. *Internal streets.* Internal streets within an open space community may be public or private. Streets shall comply with all city ordinances for private streets, or the city's or Charlevoix County Road Commission standards for public streets.
1. The creation of single-loaded residential access streets is encouraged to maximize the number of homes that may enjoy views of open space. The street layout should facilitate circulation within the development and provide connections to adjacent residential developments, minimize the number of cul-de-sacs created, and facilitate access within the development and outside of the development.
 - a. Wetland crossings and streets traversing existing slopes of 12 percent grade or greater are discouraged.
 - b. The street layout should minimize the number of cul-de-sacs. Cul-de-sacs should be designed with a central island planted with native trees and shrubs.
 2. Construction of private streets as a means of providing access and circulation is permitted. The required pavement width may be reduced by the planning commission to a minimum 22-foot width within an easement of at least 40 feet where primary or secondary conservation areas will be preserved, and the planning commission finds that there is no reasonable potential for the street to become public in the future. The planning commission may modify other requirements of any private street ordinance, if all of the following findings are made:
 - a. There is no potential for the street to connect with abutting land or be extended to serve additional land in the future; [and]
 - b. Primary or secondary conservation areas would be preserved through allowing a modification to the ordinance standards.
 3. Where private streets are developed, a maintenance plan, including a means of guaranteeing maintenance assessments from the affected property owners, shall be reviewed and approved by the city.
 4. Both sides of all internal streets shall be landscaped with street trees. For street frontages of individual lots or condominium sites, a minimum of two canopy trees with a minimum caliper of 2½ inches (d.b.h.) shall be provided per dwelling. For sections of street that do not abut lots or condominium sites, one canopy tree shall be provided on each side for every 20 feet of street. Existing trees to be preserved within five feet of the street right-of-way or easement may be credited towards meeting this requirement.
 5. The developer shall submit a statement that, if any portion of the internal street system does not meet city standards there shall be no obligation on the part of the city to repair and/or maintain that portion of the system, which is nonconforming.
- O. *Driveways.* The distance from the near edge of a street or street edge and a garage door shall be at least 25 feet if the garage door faces the street or road.
- P. *Lot and dwelling location.* Dwelling units shall be carefully located and designed in accordance with the city's comprehensive plan in order to avoid conflicts with neighboring land uses. Dwelling placement shall be planned to screen homes from off-site vantage points, away from primary and secondary conservation areas, sites

suitable for open space, and upwind from areas subject to land management practices that will cause dust, noise, smoke, odors or similar problems.

Residential lots shall be designed around both the primary and secondary conservation areas and may adjoin those areas. The majority of lots should abut open space in order to provide views and access in locations least likely to block or interrupt scenic vistas, as seen from public streets. Diversity and originality in lot layout and individual building design shall be encouraged to achieve the best possible relationship between development and the land.

All dwelling units and accessory structures shall be no less 50 feet from the edge of a major arterial and that 50-foot area shall be maintained in native plants and trees so as to create a buffer between the street and the development.

Q. *Building setbacks and yard requirements.* Building envelopes on residential lots shall comply with the following yard and setback requirements:

1. Any side of building adjacent to a public street or private street shall be setback at least 15 feet from the right-of-way or access easement;
2. Detached single unit buildings shall be a minimum ten feet apart, with a minimum of 20 feet between each fourth building. Multiple-unit buildings shall be spaced at least 15 feet apart (measured from nearest edge). Garages shall be recessed from the front building line for at least 75 percent of the units;
3. The minimum floor area required for each residence shall be equal to the minimum floor area per unit as set forth in article XX, schedule of regulations, for the district in which the cluster is located;
4. Dwelling units should generally not be located closer than 100 feet to a primary conservation area or closer than 50 feet to a secondary conservation area. These setbacks should be part of the dedicated open space and not privately owned; [and]
5. Dwellings located within open fields or pastures should be sited on the least important agricultural soils, or in locations at the far edge of a field, as seen from existing public street rights-of-way. Other considerations may include proposed visual buffering, such as native trees or wild flowers, from public street rights-of-way.

The building setback requirements may be varied provided they are specifically indicated on the open space community plan and the planning commission determines the variation does not negatively impact primary and secondary conservation areas or adjacent properties, and provides a recognizable benefit.

- R. *Compatibility with adjacent uses.* The setbacks, density, height, traffic, parking, circulation, landscaping, views and other design features shall be compatible with the character of the site and surrounding properties. The proposed location of accessory uses or structures that are of a significantly different scale or character than the abutting residential districts, such as access drives, parking areas, solid waste pickup points, swimming pools, tennis courts and facilities of a similar nature, shall not be located near the boundary of the development or so as to negatively impact the residential use of adjacent lands and the general planning area as indicated by the city's comprehensive plan.
- S. *Transition areas.* Where the open space community abuts a district other than a single-family residential district, the planning commission may require a transition area. Grading within the transition area shall be minimal unless needed to provide effective buffering or accommodate drainage. If the grade change is to be varied by more than three feet, the development plan shall include cross sections illustrating existing and proposed grades in relation to existing and proposed building heights. The cross sections shall be supplemented with photographs of existing conditions along the property line. Perspective renderings from adjacent sites are encouraged. The planning commission may review the proposed transition area to ensure compatibility and require that it consist of one or more of the following:

1. Dwelling units similar to adjacent residential development in terms of density, lot area, lot width, setbacks and spacing, with consideration of any changes to existing grade, as determined by the planning commission.
 2. Woodlands, natural features or a landscaped greenbelt sufficient to provide an obscuring effect and at least 50 feet wide in depth.
 3. Open or recreation space not less than 50 feet wide in depth.
 4. Significant changes in topography which provide an effective buffer.
 5. A major or secondary thoroughfare as defined in the city's comprehensive plan.
- T. *Architectural and site element design.* Buildings shall provide harmony with adjacent uses in terms of texture, materials, peaked rooflines and massing, but there shall be a variation of front facade depth and rooflines to avoid monotony. Residential facades shall not be dominated by garages; at least 75 percent of residential units shall have side entry garages or recessed garages where the front of the garage is at least five feet behind the front line of the living portion of the principal dwelling. The intent of encouraging recessed or side entry garages is to enhance the aesthetic appearance of the development and minimize the aesthetic impact resulting from the close clustering of units allowed under these regulations. Building elevations shall be required for all structures other than single-family dwellings.
- U. *Pedestrian circulation.* The open space community plan shall provide safe and convenient pedestrian access to all open space areas from the following: all residential areas including lots not adjoining open space areas; connections between open space areas; public thoroughfares; open space areas, trails, or pathways on adjoining parcels; and connections between appropriate on-site and off-site uses. (Conserved farmland may be exempted from this requirement to protect crops from damage.) Accessibility shall meet barrier-free standards.

Trails within the open space community may be constructed of gravel, wood chips or other similar material; provided they meet applicable barrier-free standards, however the planning commission may require construction of six-foot-wide paved bicycle paths through portions of the development or along the any public right-of-way abutting the open space community. The planning commission may require the construction of sidewalks for open space communities. Locations for school bus stops shall be provided on the development plan.

- V. *Natural features.* The development shall be designed to promote the preservation of natural features. Individual lots, buildings, streets and parking areas shall be designed and situated to minimize alteration of the natural environment. If animal or plant habitats of significant value exist on the site, the planning commission, as a condition of approval, may require that the open space community plan preserve these as contiguous areas in a natural state and adequately protect them as nature preserves or limited access areas. The planning commission may also require a minimum of 25-foot-wide undisturbed open space setback from the edge of any, lake, pond, river, stream or wetland; provided that the planning commission may permit trails, boardwalks, observation platforms or other similar structures that enhance passive enjoyment of the site's natural amenities within the setback.
- W. *Utilities.* All public and semipublic utilities, including but not limited to potable water, sanitary sewer, storm sewer and drainage systems, electricity, telephones, cable televisions, natural gas, etc., shall be placed underground.

Sec. 18.60. - Optional provisions for exemplary projects.

The planning commission may allow an exemplary open space community to include one or more of the following optional provisions. In order to qualify for an optional provision, the applicant must demonstrate, to the satisfaction of the planning commission, that the proposed project exceeds the minimum standards for open space community eligibility under this article,

and all structures within the project, including single-family dwellings, shall be subject to architectural review by the planning commission.

- A. *Density bonus.* A variable density bonus of up to 20 percent may be allowed at the discretion of the planning commission, based upon a demonstration by the applicant of design excellence in the open space community. In order to qualify for a density bonus, the open space community must be served by public sanitary sewer. Projects qualifying for a density bonus shall include at least one of the following elements:
1. Preservation of all primary and secondary conservation areas contained within the site;
 2. A high level of clustered development where a minimum of 40 percent of the open space community is common open space;
 3. Inclusion of an integrated mixture of housing types;
 4. Provision of unique recreational facilities, more extensive landscaping than required, significant bicycle/pedestrian paths, or unique open space of recognizable benefit to the city; [and]
 5. Other similar elements as determined by the planning commission.
- B. *Multiple family component.* In an open space community with a gross area of 20 acres or more, up to 40 percent of the dwelling units may be other than single-family dwellings. Such units shall meet the following design standards.
1. *Front yard.* The minimum building setback from an internal street shall be 20 feet from the public street right-of-way or private street easement. The planning commission may reduce the setback based upon a determination that off-street parking will be adequate, and that the modification will preserve primary or secondary conservation areas or that the rear yard buffer will be increased by one foot for each one foot of reduction in the front yard setback. In no instance shall the front yard setback be reduced below a minimum of 15 feet. Buildings that front on two streets must provide the required front yard setback from both streets.
 2. *Rear yard.* A 35-foot rear yard shall be maintained for all buildings. Where the rear of a building abuts the side or rear of another residential structure, the minimum spacing between the structures shall be the combined total of the two setback requirements.
 3. *Side yards.* A ten-foot setback shall be maintained to the side of all residential buildings. Where two buildings are located side-by-side, a 25-foot spacing shall be maintained between multiple-family units.
 4. *Off-street parking lots.* Off-street parking lots serving three or more dwelling units shall provide a ten-foot wide-open green space area around the perimeter of the parking lot.
 5. *Variation.* The building setback requirements may be varied provided they are specifically indicated on the open space community plan and the planning commission determines the variation does not negatively impact adjacent properties and provides a recognizable benefit. Building setback requirements on the perimeter of the development shall not be reduced below 35 feet.
- C. *Commercial component.* An open space community with a gross area of 40 acres or more may incorporate a neighborhood commercial land use component, provided that all of the following standards are met:
1. The neighborhood commercial component shall be located on a lot of sufficient size to contain all commercial structures, parking, and landscape buffering. The total area occupied by the commercial land uses may not exceed five percent of the gross area of the open space community or two acres, whichever is less;
 2. Only those uses listed as principal permitted uses in the (transitional commercial district (TCD)) shall be allowed, and any commercial uses shall be compatible with the residential area to the satisfaction of the

- planning commission;
3. Any commercial structure shall meet the architectural requirements of the TCD, and the planning commission shall determine that the architectural design of the structures is compatible with the balance of the development;
 4. All commercial structures shall be connected to a pedestrian access system servicing the project;
 5. Vehicular access shall be available only from an access drive to the open space community that connects directly with city or county street or a state highway;
 6. If a proposed project cannot provide direct access to a city or county street or a state highway, the planning commission may approve a neighborhood commercial land use component for an open space community project located on any paved thoroughfare, subject to:
 - a. A conditional use hearing on the location of the use being held prior to consideration by the planning commission. The hearing shall be conducted according to the procedures stated in this ordinance; and
 - b. The planning commission making the finding that the overall site layout, including the architectural design and the vehicular circulation pattern, is compatible with the surrounding land uses, and will not have a significant detrimental effect on the character of surrounding residential uses;
 7. All parking and loading areas serving the commercial uses shall be to the rear or side of the structure and fully screened from view of any public street, except that the planning commission may allow up to 25 percent of the minimum number of required parking spaces in the front yard. Where the parking lot is visible from residential units or open space, it shall be planted with a landscape buffer consisting of evergreen trees with a minimum height of six feet and spaced no more than ten feet on center; [and]
 8. No structure within the neighborhood commercial land use component of an open space community shall be occupied without a valid certificate of occupancy from the city.
 - a. A request for a certificate of occupancy for a commercial structure within an open space community shall be reviewed by the planning director to insure compliance with this article.
 - b. A certificate of occupancy may be approved only for uses identified in this article. Approval shall not be granted to a use that is inconsistent with the intent and/or requirements of this article.
 - c. The initial certificate of occupancy for a commercial structure or portion of a commercial structure within the open space community shall not be approved until 50 percent of the physical improvements related to the residential components of the total open space community plan are complete, notwithstanding an approved schedule for project phasing.
 - d. A certificate of occupancy may be revoked by action of the city if a use is conducted in a manner that does not comply with this article and/or any other requirements of this ordinance.

Sec. 18.70. - Application requirements and review procedures.

- A. *General application requirements.* The application for approval of an open space community shall be made according to procedures and guidelines adopted by the city for approval of either development plans, condominiums, platted subdivisions, or land divisions, as applicable. The required materials, as applicable, shall be submitted to the city along with all required fees. An open space community plan shall be submitted which depicts all required information and materials including, at a minimum, the following information:
 1. Topography based on United States Geological Service data, at ten-foot or five-meter intervals;
 2. Location of all primary and secondary conservation areas within and surrounding the proposed site;

3. Location of rights-of-way and permanent easements (utilities, access, drainage); [and]
 4. Soil boundaries and descriptions based on soil conservation service maps.
- B. *Effect of approval.* Approval of an open space community proposal shall not require, nor shall it be construed as, an amendment to this ordinance. All improvements and uses of the site shall be in conformity with the approved open space community site plan and comply fully with any imposed conditions.
 - C. *Recording of action.* The applicant shall record an affidavit with the Charlevoix County Register of Deeds containing the full legal description of the project site, specifying the date of final city approval, and declaring that all improvements will be carried out in accordance with the approved open space community plan unless an amendment is approved by the city. In addition, all deed restrictions and easements shall be duly filed with the register of deeds and copies of recorded documents presented to the city.
 - D. *Zoning permit.* Following final approval of the open space community plan and final approval of the engineering plans by the city, a zoning permit may be obtained. It shall be the responsibility of the applicant to obtain all other applicable city, county, state or federal permits.
 - E. *Initiation of construction.* If construction has not commenced within 24 months of final approval, all city approvals become null and void. The applicant may apply in writing to the planning commission for an extension, not to exceed 12 months. A maximum of two extensions may be allowed.
 - F. *Continuing adherence to plan.* Any property owner who fails to maintain an approved site design shall be deemed in violation of the use provisions of this ordinance and shall be subject to the penalties for same.
 - G. *Performance guarantee.* The planning commission may require that a performance guarantee, in accordance with the terms and conditions of this ordinance, be deposited with the city to insure completion of improvements.
 - H. *Approval process.* The request for an open space community shall follow the following procedures:
 1. Preliminary review of the concept by the planning commission;
 2. A public hearing conducted by and at the discretion of the planning commission; [and]
 3. Final review by the planning commission following the standards and procedures described in article XIX, development plan requirements, and the standards of this article, herein, and any applicable standards for land divisions, platted subdivisions, or condominium subdivisions.

Sec. 18.80. - Scheduled phasing.

- A. *Scheduled phasing.* When proposed construction is to be phased, the project shall be designed in a manner that allows each phase to fully function on its own regarding services, utilities, circulation, facilities, and open space. Each phase shall contain the necessary components to insure protection of natural resources and the health, safety, and welfare of the users of the open space community and the residents of the surrounding area.
- B. *Timing of phases.* Each phase of the project shall be commenced within 24 months of the schedule set forth on the approved site plan. If construction of any phase is not commenced within the approved time period, approval of the plan shall become null and void, subject to the requirements of this article.

Sec. 18.90. - Project review standards.

In considering any application for approval of a open space community site plan, the planning commission shall review and consider an open space community plan under the standards for development plan review in article XIX, and any applicable standards for condominiums, platted subdivisions, and land divisions, along with the following standards and requirements:

- A. *Compliance with the open space intent.* The overall design and land uses proposed in connection with an open

space project shall be consistent with the stated intent of the open space community option, and with the specific standards set forth herein. The usefulness of open space intended for recreation, conservation or agricultural purposes shall be determined by the size, shape, topographic and location requirements of the particular purpose proposed for the parcel. The suitability of open space intended for scenic value purposes shall be determined by its visibility from a significant number of units or buildings.

B. *Compatibility with adjacent uses.* Individual lots, buildings, and units shall be arranged and situated to relate to surrounding properties, to improve the view from public streets and to blend into the existing natural landscape. The proposed open space community plan shall be compatible with the character of the site and surrounding properties and set forth in detail all specifications with respect to setbacks, density, height, parking, circulation, landscaping, views and other design features that exhibit due regard for the relationship of the development to surrounding properties, the character of the site, and the land uses. In determining whether this requirement has been met, consideration shall be given to:

1. The bulk, placement, and materials of construction of proposed structures;
2. Pedestrian and vehicular circulation;
3. The location and screening of vehicular use or parking areas, and dwelling units from neighboring property; [and]
4. The provision of landscaping and other site amenities.

C. *Environmental and traffic impacts.* The open space community shall be designed to accomplish the following objectives:

1. Protect, preserve, and maintain primary and secondary conservation areas from clearing, grading, filling, or construction except as approved for essential services or recreation amenities;
2. Create sufficient buffer areas to minimize conflicts between residential and agricultural or other open space uses;
3. Maintain existing hedge rows and tree lines between fields or meadows, and minimize impacts on woodlands;
4. Leave scenic views and vistas unblocked or uninterrupted, particularly as seen from public rights-of-way;
5. Avoid siting new construction on prominent hilltops or ridges by taking advantage of lower topographic features;
6. Protect wildlife habitat areas, especially for species listed as endangered, threatened or of special concern by the federal or state government;
7. Incorporate sites of historic, archaeological or cultural value and their environs;
8. Provide open space that is reasonably contiguous and whose configuration is in accordance with guidelines contained in the Design and Management Handbook for Preservation areas produced by the National Land Trust;
9. Design individual lots, buildings, streets and open space areas to minimize the alteration of environmental site features;
10. Minimize the impact of traffic generated by the proposed development on surrounding uses;
11. Protect the rural character by establishing buffer zones along scenic corridors and improve public safety and vehicular carrying capacity by avoiding development that fronts directly upon existing streets;
12. Landscape common areas, cul-de-sac islands, and both sides of new streets with native species of shade trees and flowering shrubs with high wildlife conservation value;

13. Provide active recreation areas in suitable locations that offer convenient access by residents and adequate screening nearby dwelling units; [and]
14. Include a pedestrian circulation system designed to ensure that pedestrians can walk safely and easily throughout the site.

The planning commission may require an impact assessment for sites with significant natural features, or a traffic impact study for projects with more than 50 dwelling units.

- D. *Compliance with applicable regulations.* The proposed open space community shall comply with all applicable federal, state, county, and city regulations.
- E. *Comprehensive plan.* The proposed open space community shall be consistent with the residential development and environmental conservation goals, objectives, and policies, and shall further the implementation of, the city's comprehensive plan and any subsequent amendments thereto.
- F. *Conditions.* Reasonable conditions may be required with the approval of an open space community, to the extent authorized by law, for the purpose of ensuring 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, protecting the natural environment and conserving natural resources and energy, ensuring compatibility with adjacent uses of land, promoting the use of land in a socially and economically desirable manner, and further the implementation of the city's comprehensive plan.

Conditions imposed shall be: (a) designed to protect natural resources, and the public health, safety and welfare of individuals in the project, those immediately adjacent, and the community as a whole; (b) reasonable related to the purposes affected by the open space community; (c) necessary to meet the intent and purpose of this ordinance and implement the city's comprehensive plan; and (d) related to the objective of ensuring compliance with the standards of this ordinance. All conditions imposed shall be made a part of the record of the approved open space community.

Sec. 18.95. - Revision of approved plans.

A. *Minor changes.*

1. Minor changes to an approved open space community plan may be permitted by the planning commission following normal development plan review procedures outlined in this article for the following:
 - a. Reductions in density;
 - b. Changing non-single-family dwelling units to single-family dwelling units;
 - c. Realignment of streets;
 - d. Modifications to setbacks;
 - e. Increasing the amount of open space;
 - f. Changes to landscaping; provided the number of plantings is not decreased;
 - g. Change in the size of detention ponds by no more than ten percent;
 - h. Changes to a phasing plan; [and]
 - i. Other minor changes similar to the above, as determined by the planning commission.
2. Minor changes shall be subject to the finding of all of the following:
 - a. Such changes will not adversely affect the initial basis for granting approval;
 - b. Such changes will not adversely affect the overall open space community in light of the intent and purpose of such development as set forth in this article; and

- c. Such changes shall not result in the reduction of open space area as required herein.
- B. *Major changes.* Proposed changes to an approved plan for an open space community that do not qualify as minor under this section may only be revised by resubmitting a revised open space community site plan for approval following the procedures set forth this article.

ARTICLE XIX. - DEVELOPMENT PLAN REQUIREMENTS

Sec. 19.05. - Intent.

The purposes of development plan review are to determine compliance with this ordinance, to promote the orderly development of the city, the stability of land values and investments and the general welfare, and to help prevent the impairment or depreciation of land values and development by the erection of structures or additions thereto without proper attention to siting and appearance. It is further the intent of this article to require the gradual upgrade of existing sites that do not conform with current standards of this ordinance and ensure that the arrangement, location, design and materials within a site are consistent with the character of the city and the goals and design guidelines in the comprehensive plan.

Sec. 19.10. - Development plan review required.

Prior to the erection of any building or structure in any zoning district for any principal permitted use in the city, any land use requiring conditional use approval or any open space community, other than single-family detached residences and accessory buildings, structures and uses thereto, the development plan review procedures set forth in this section shall be followed unless otherwise provided for in section 19.15, administrative review, below.

Sec. 19.15. - Administrative review.

The planning director may approve a development plan or sketch plan for the following uses, provided the development plan or sketch meets the application submittal requirements of sections 19.20, sketch plan review, and 19.30, application requirements, below, and complies with all other requirements standards of this ordinance:

- A. An increase in floor area of building up to 1,000 square feet or five percent of existing floor area, whichever is less, with no required increase in parking area (only if the total of expansions within the last five years, as determined by the administrator, do not exceed this amount);
- B. A new use that is a principal permitted use in a given zoning district and requires no significant changes to the building footprint, facade, parking, landscaping, lighting, signs, or vehicular access;
- C. An expansion, replacing or alteration of landscaping areas consistent with the requirements of this ordinance;
- D. Improvements or installation of walls, fences, lighting or curbing consistent with the requirements of this ordinance;
- E. Alterations to the off-street parking layout or installation of pavement or curbing improvements; provided the total number of spaces shall remain constant, and the construction plans and lot construction are approved by the city;
- F. Relocation of a waste receptacle to a more inconspicuous location, or the installation of screening, both consistent with the requirements of this ordinance;
- G. Changes to a facade, architectural features or wall signs; provided such changes are consistent with the requirements of this ordinance and do not significantly and materially change the appearance of the building.

(An elevation plan showing changes and construction materials is required);

- H. A change from a nonconforming use, building or site to a more conforming situation consistent with the requirements of this ordinance;
- I. Modifications to upgrade a building to improve barrier-free design, comply with Americans with Disabilities Act or other federal, state or county regulations;
- J. Internal construction or change in the floor plan for a conforming use that does not increase gross floor area; provided the construction cost over a 12 month period does not exceed 50 percent of the building's state equalized value or affect parking requirements on a site;
- K. Repairing, resurfacing, restriping or curbing of parking lots; [and]
- L. Construction or erection of signs, retaining walls, fences, waste receptacles, sidewalks, antennae, lights, poles, cooling/heating or other mechanical equipment, telephone booths, newspaper boxes, landscaping or similar structures which conform to the requirements of this ordinance or other city standards, and where development plan review is not specifically required under other sections of this ordinance.

The planning director may require that any of the above mentioned uses shall require formal development plan approval by the planning commission as described within this section.

Sec. 19.20. - Sketch plan review.

- A. *Intent.* The intent of this section is to permit submittal of a sketch plan in certain specific instances where a complete development plan is not considered essential to ensure compliance with the intent and standards of this ordinance.
- B. *Procedure.* The process for administrative approval stated in subparagraph (C), below, shall involve submittal of a sketch plan and required application form and fee to the planning director. The administrator shall review the sketch plan in accordance with the same procedure, requirements, and standards used by the planning commission for a formal development plan. The administrator shall make a report of administrative reviews to the planning commission.

The sketch plan shall meet the requirements for a preliminary development plan as specified in subparagraph (C), below. The administrator retains the option to require additional information or a complete development plan for review by the planning commission, particularly for sites which do not comply with previously approved development plans, sites with parking deficiencies, sites abutting residential districts or sites experiencing problems with drainage, traffic, noise, aesthetics or other general health and safety issues. If a formal development plan is required, the administrator shall inform the applicant to submit a set of plans in accordance with this article.

- C. *Application requirements.* The sketch plan for administrative approval shall contain the following information found under section 19.30, application requirements, below, unless the planning director determines that some of the required information is not reasonably necessary. However, the information requested in subparagraphs (A), (B), (E), (F) (1 through 5), (I), (L), and (N), shall be contained in all sketch plan applications.
- D. *Eligibility.* A sketch plan, rather than a complete development plan package, may be submitted for minor modifications to a legally existing and conforming use and building which is permitted in the zoning district (i.e., conditional uses are not eligible) including alterations to a building or site that do not result in expansion or substantially affect the character or intensity of the use, vehicular or pedestrian circulation, drainage patterns, the demand for public infrastructure or services, significant environmental impacts or increased potential for hazards.
- E. *Planning commission review.* The sketch plan may be referred to the planning commission for review when deemed necessary by the planning director.

Sec. 19.25. - Application submittal.

Eighteen copies of the development plan, at a scale of not less than one inch equals 100 feet, including all items required therewith, shall be submitted to the planning director not less than 30 days prior to the next regular or special planning commission meeting in order to be placed on the agenda for that particular meeting. The commission may prepare forms and require the use of such forms in development plan preparation.

Sec. 19.30. - Application requirements.

The following information shall accompany all plans submitted for formal development plan review, unless the planning director determines that some of the required information is not reasonably necessary:

- A. A completed application form, supplied by the city, and an application fee. A separate escrow deposit may be required for administrative charges to review the development plan submittal;
- B. Current proof of ownership of the land to be utilized or evidence of a contractual ability to acquire such land, such as an option or purchase agreement, and a title search or other evidence of any applicable easements or deed restrictions;
- C. A narrative indicating the period of time within which the project will be completed;
- D. Sheet size of submitted drawings shall be at least 24 inches by 36 inches, with graphics at an engineers scale of at least one inch equals 20 feet for sites of 20 acres or less. The remaining 15 sets may be 11 inches by 17 inches, at an appropriate and correct scale;
- E. A cover sheet providing:
 1. The applicant's name;
 2. The name of the development;
 3. The preparer's name and the professional seal of architect, engineer, surveyor or landscape architect indicating license in the State of Michigan, when necessary;
 4. The date of preparation and any revisions;
 5. A north arrow;
 6. Property lines and dimensions;
 7. A complete and current legal description and size of property in acres and square feet, and complete tax I.D. number; [and]
 8. A small location sketch of sufficient size and scale (within one-half mile is suggested) showing the location of the area in relation to surrounding properties, streets, freeways, schools, school sites and other significant features of the city, where appropriate;
- F. Plan sheet(s) indicating:
 1. The zoning and current land use of the applicant's property and all abutting properties and of properties across any public or private street from the site;
 2. Lot lines and all structures on the property and within 100 feet of the site's property lines;
 3. The location of any access points on both sides of the street within 100 feet of the site along streets where access to the site is proposed;
 4. Existing buildings and any public or private easements, noting those which will remain and which are to be removed;
 5. The layout and typical dimensions of the proposed lots, building footprints and dimensions of proposed

buildings and structures, the uses contained therein, the number of stories, gross building areas, distances between structures and lot lines, and setback lines, with the acreage or area in square feet allotted to each use. For residential developments, the number, type, and density of proposed housing units shall be included; if a multiple-phase development is proposed, identification of the areas included in each phase shall be included;

6. Elevations showing height, materials and colors for all proposed structures, including any residential units, shall be provided and considered part of the approved development plan. The building elevations must show all rooftop mechanical units along with the proposed method of screening;
7. Setbacks, typical floor plans and a sketch of any ground-mounted equipment to scale along with required screening;
8. Existing and proposed locations of utility services (with sizes and materials as specified in the city's municipal standards), including storm drainage, retention or detention ponds, fire hydrants, and any public or private easements; notes shall be provided clearly indicating which existing services will remain and which will be removed;
9. Locations of significant natural, historical, and architectural features, including landmark trees, that will be designated "to remain" and protected by a fence or a barrier installed prior to site preparation, and/or as "areas not to be disturbed" and secured through installation of a snow fence, other fencing, or police line during development of the site, and including acreage of designated areas;
10. Locations of any wetlands regulated by the Michigan Department of Environmental Quality, submission of a wetland delineation by a qualified wetland consultant, and indication of the status of application for a wetland permit from the Michigan Department of Environmental Quality or copy of a permit received including description of any wetland mitigation required; and location of other significant nonregulated wetland areas over two contiguous acres;
11. Location and method of screening for all waste receptacles meeting the requirements of this ordinance;
12. Location and dimensions of parking lots and spaces, and loading/unloading areas, and calculations to meet the requirements of this ordinance;
13. Details of exterior lighting meeting the requirements of this ordinance including locations, height, and method of shielding;
14. A photometric grid overlaid on the proposed development plan indicating the overall light intensity throughout the site (in footcandles);
15. Locations of all signs including:
 - a. Location, type, height and method of lighting for identification signs; [and]
 - b. Location and type of any directional or regulatory/traffic control signs, with details for any sign not conforming to the Michigan Manual of Uniform Traffic Control Devices;
16. Details of site circulation and access design and which meet the city's municipal standards, including:
 - a. Dimensions of existing and proposed right-of-way lines, including those abutting the site, and names of abutting public streets;
 - b. Indication of street, parking lot, and other surfaced areas pavement widths, pavement type, and curbing meeting the requirements of this ordinance, and the city's municipal standards;
 - c. Street horizontal and vertical dimensions, including curve radii;
 - d. Locations and dimensions of access points, including deceleration or passing lanes, distance from

- adjacent driveways or intersection streets, including those across a street;
- e. Parking areas, including the general layout and design of parking lot spaces; [and]
 - f. The location of existing sidewalks and the location and dimensions for proposed sidewalks;
- G. A landscape plan meeting the requirements of this ordinance, indicating proposed plant locations with common plant name, number, and size in caliper at installation. Berms, retaining walls, screening walls, screening landscaping, or fences shall be shown with elevations from the surrounding average grade;
- H. A site grading plan for all developments where grading will occur, with existing and proposed topography at a minimum of two-foot-contour levels and with topography extending a minimum of 50 feet beyond the site in all directions and a general description of grades within 100 feet, and further, where required, to indicate stormwater runoff into an approved drain or detention/retention pond;
- I. A general description and location of stormwater management system shall be shown on the grading plan, including pre- and post-site development runoff calculations used for determination of stormwater management, and location and design (slope) of any retention/detention ponds. All plans must comply with the Charlevoix County Stormwater Ordinance. Stormwater outfall structures or basins constructed in a wetland regulated by the Michigan Department of Environmental Quality may require a wetland permit from the department; and, if constructed below the ordinary high-water mark of an inland lake or stream, will require a permit under the Inland Lakes and Streams Act, PA 346 of 1972, as amended. Status of permit application to the department or copy of permit with attached conditions shall be provided as applicable;
- J. Written verification of access easements or agreements, if applicable;
- K. A note of each plan sheet stating "Not to be used as construction drawings";
- L. Any additional graphics or written materials requested by the planning director or planning commission to assist the city in determining the compliance with the final development plan standards, such as aerial photography, photographs, conceptual as-built renderings, traffic impacts using trip generation rates recognized by the Institute of Transportation Engineers (ITE) for an average day and peak hour of the affected roadways, and impact on significant natural features and drainage;
- M. The following information shall be submitted as a part of an application for permission to commence any type of development within the flood hazard district (FHD):
1. The elevation in relation to mean sea level of the floor, including basement, of all structures according to International Great Lakes Datum (I.G.L.D.);
 2. A description of the extent to which any watercourse will be altered or relocated as a result of proposed development;
 3. Proof of development permission from appropriate local, state, and federal agencies as required by this ordinance, including a floodplain permit, approval, or letter of no authority from the Michigan Department of Environmental Quality under authority of Act 245 of the Public Acts of 1929, as amended by Act 167 of the Public Acts of 1968, the Flood Plain Regulatory authority;
 4. Base flood elevation data where the proposed development is subject to Act 288 of the Public Acts of 1967, the Land Division Act, as amended, or greater than five acres in size; [and]
 5. Additional information which may be reasonably necessary to determine compliance with the provisions of this ordinance;
- N. Such other information as may be required by the city to assist in the consideration of the proposed development, including but not limited to an analysis of the planning implications of the proposed development including the methodology of how the planning implications were determined. The analysis shall be carried out

by qualified individuals and shall include, but need not be limited to:

1. Estimated population holding capacity of any residential land uses to be included in the proposed development and general impact on community facilities such as primary and secondary schools and parks; [and]
2. A traffic analysis which relates the trip generation of the proposed development to existing and projected traffic capacities, volumes and patterns on surrounding streets.

Sec. 19.35. - Preliminary development plan review.

The development plan approval process includes an optional review of a preliminary development plan by the planning commission. This process is at the option of the planning commission for: development plans affecting over three acres; sites containing floodplains or within the flood hazard zone; sites containing or potentially containing designated/regulated wetlands by the Michigan Department of Environmental Quality; and/or conditional uses and complex commercial development sites.

The review of a preliminary development plan allows the planning commission, planning director, other boards, commissions, staff and consultants to review and comment on the project's compliance with the standards of this ordinance prior to the preparation of all the required final development plan review materials.

- A. The application for preliminary development plan review shall be the same as those contained within this article for formal development plan review.
- B. The planning commission, planning director and consultants shall review the preliminary development plan and provide comments on its compliance with the development plan approval standards and other sections of this ordinance. The preliminary development plan may also be reviewed by other city boards and commissions.
- C. Any applicants for development plan review may elect to submit a final development plan in accordance with the requirements and procedures of this section.
- D. A conceptual review may be conducted by the downtown development authority (DDA) for all proposed projects within the boundaries of the DDA that require development plan approval before any such projects are forwarded to the planning commission for formal development plan review. Copies of a conceptual as-built rendering of the proposed project, as may be required under this article, herein, shall be forwarded to the DDA by the planning director upon receipt of an application requiring development plan review within the boundaries of the DDA.

The DDA shall be responsible for placing a conceptual review of such projects on the agenda for their next regular meeting if such meeting will occur before the next regular meeting of the planning commission. If the next regular meeting of the DDA will occur after the next regular meeting of the planning commission, the DDA shall be responsible for review of any projects prior to planning commission approval. The DDA may make recommendations regarding a project to the planning commission after conceptually reviewing such project. For all projects in the planned industrial district, the Boyne City EDC shall review the proposed development plan and shall submit a written recommendation.

Sec. 19.40. - Development plan approval criteria.

In order that buildings, open space and landscaping will be in harmony with other structures and improvements in the area, and to ensure that no undesirable health, safety, noise and traffic conditions will result from the development, the planning commission shall determine whether or not the development plan meets the following criteria, unless the planning commission determines that one or more of such criteria are inapplicable:

- A. *General[ly]*. All elements of the development plan shall be designed to take into account the site's topography,

the size and type of plot, the character of adjoining property, and the traffic operations of adjacent streets. The site shall be developed so as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this ordinance. The development plan shall conform with all requirements of this ordinance, including those of the applicable zoning district(s).

- B. *Building design.* The building design shall relate to the surrounding environment in regard to texture, scale, mass, proportion, and color. High standards of construction and quality materials will be incorporated into the new development. In addition to following design guidelines adopted in specific district or sub-area plans, the building design shall meet the architectural and building material requirements of this ordinance.
- C. *Preservation of significant natural features.* Judicious effort shall be used to preserve the integrity of the land, existing topography, and natural, historical, and architectural features as defined in the ordinance from which this section was derived, in particular wetlands designated/regulated by the Michigan Department of Environmental Quality, and, to a lesser extent, wetlands which are not regulated by the department. Parcels along the city's lakefront shall be developed as to minimize disruption of visual access to the lakefront from adjacent roadways and to maintain view sheds of the lakefront.
- D. *Streets.* All streets shall be developed in accordance with the City of Boyne City Subdivision Control Ordinance and city municipal standards, unless developed as a private road in accordance with the requirements of the city.
- E. *Access, driveways and circulation.* Safe, convenient, uncongested, and well-defined vehicular and pedestrian circulation within and to the site shall be provided. Drives, streets, parking and other elements shall be designed to discourage through traffic, while promoting safe and efficient traffic operations within the site and at its access points. All driveways shall meet the design and construction standards of the city. Access to the site shall be designed to minimize conflicts with traffic on adjacent streets, particularly left turns into and from the site. For uses having frontage and/or access on a major traffic route, as defined in the City of Boyne City Comprehensive Plan, the number, design, and location of access driveways and other provisions for vehicular circulation shall comply with the access management provisions of this ordinance.
- F. *Emergency vehicle access.* All buildings or groups of buildings shall be arranged so as to permit necessary emergency vehicle access as required by the fire department, ambulance department and police department.
- G. *Sidewalks, pedestrian and bicycle circulation.* The arrangement of public or common ways for vehicular and pedestrian circulation shall be connected to existing or planned streets and sidewalks/pedestrian or bicycle pathways in the area. There shall be provided a pedestrian circulation system which is separated from the vehicular circulation system. In order to ensure public safety, special pedestrian measures, such as crosswalks, crossing signals and other such facilities may be required in the vicinity of primary and secondary schools, playgrounds, local shopping areas, fast food/service restaurants and other uses which generate a considerable amount of pedestrian or bicycle traffic.
- H. *Barrier-free access.* The site has been designed to provide barrier-free parking and pedestrian circulation.
- I. *Parking.* The number and dimensions of off-street parking [spaces] shall be sufficient to meet the minimum required by this ordinance. However, where warranted by overlapping or shared parking arrangements, the planning commission may reduce the required number of parking spaces, as provided in this ordinance.
- J. *Loading.* All loading and unloading areas and outside storage areas, including refuse storage stations, shall be screened in accordance with this ordinance.
- K. *Landscaping, screening, and open space.* The landscape shall be preserved in its natural state, insofar as practical, by removing only those areas of vegetation or making those alterations to the topography which are reasonably necessary to develop the site in accordance with the requirements of this ordinance. Landscaping

shall be preserved and/or provided to ensure that proposed uses will be adequately buffered from one another and from surrounding public and private property. Landscaping, landscape buffers, greenbelts, fencing, walls and other protective barriers shall be provided and designed in accordance with the landscaping provisions of this ordinance. Recreation and open space areas shall be provided in all multiple-family residential and educational developments.

- L. *Soil erosion control.* The site shall have adequate lateral support so as to ensure that there will be no erosion of soil or other material. The final determination as to adequacy of, or need for, lateral support shall be made by the planning director or city engineer, and have a valid Charlevoix County Soil Erosion permit.
- M. *Utilities.* Public water and sewer facilities shall be available or shall be provided for by the developer as part of the site development, where such systems are available.
- N. *Stormwater management.* Appropriate measures shall be taken to ensure that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Provisions shall be made to accommodate stormwater which complements the natural drainage patterns and wetlands, prevent erosion and the formation of dust. Sharing of stormwater facilities with adjacent properties shall be encouraged. The use of detention/retention ponds may be required. Surface water on all paved areas shall be collected at intervals so that it will not obstruct the flow of vehicular or pedestrian traffic or create standing water. All such measures shall comply with the Charlevoix County Stormwater Ordinance.
- O. *Lighting.* Exterior lighting shall be arranged so that it is directed preferably downward onto the subject site and deflected away from adjacent properties. Lighting shall not impede the vision of traffic along adjacent streets. Flashing or intermittent lights shall not be permitted.
- P. *Noise.* The site has been designed, buildings so arranged, and activities/equipment programmed to minimize the emission of noise, particularly for sites adjacent to residential districts.
- Q. *Mechanical equipment.* Mechanical equipment, both roof and ground mounted, shall be screened in accordance with the requirements of this ordinance.
- R. *Signs.* The standards of the City of Boyer City's Sign Ordinance are met.
- S. *Hazardous materials or waste.* For businesses utilizing, storing or handling hazardous material such as automobile service and automobile repair stations, dry cleaning plants, metal plating industries, and other industrial uses, documentation of compliance with state and federal requirements shall be provided.
- T. *Other agency reviews.* The applicant has provided documentation of compliance with other appropriate agency review standards, including, but not limited to, the Michigan Department of Natural Resources, Michigan Department of Environmental Quality, Michigan Department of Transportation, Charlevoix County Drain Commissioner, Northwest Michigan Community Health Agency, Charlevoix County Building Department, and other federal and state agencies, as applicable.
- U. *Approval process.* The development plan shall be reviewed by the planning commission. If disapproval is recommended, the planning commission shall cite reasons for such disapproval. If the planning commission finds a development plan not in conformity with this section, it may, at its discretion, return the development plan to the applicant with a written statement of the modifications necessary to obtain approval. Upon resubmission of the modified development plan, the planning commission shall review the plan. The commission may approve, disapprove or approve subject to compliance with such modifications and conditions as may be deemed necessary to carry out the purpose of this ordinance and other ordinances and resolutions of the city. If disapproved, the planning commission shall cite reasons for such disapproval.

Sec. 19.45. - Approval for phased developments.

The planning commission may grant approval for development plans with multiple phases only as a final development plan meeting the submission requirements of this section. Any future phases identified on a development plan must be reviewed again by the planning commission in the form of a final development plan submission. The commission may require that the conceptual layout for outlots be shown on development plans to ensure proper development of the overall site. When a future phase of development is identified on a development plan, however, the planning commission is not bound by any aspect of that portion of the plan. In addition, any phase of a development plan where construction has not commenced within one year from the date of approval must return to the planning commission for development plan approval.

Sec. 19.50. - Conditions of approval.

- A. As part of an approval to any development plan, the planning commission may impose any additional conditions or limitations as in its judgment may be necessary to ensure that public services and facilities can accommodate the proposed development plan and its activities, to protect significant natural features and the environment, and to ensure compatibility with adjacent land uses. Such conditions shall be considered necessary by the planning commission to ensure compliance with the review standards of this section, and necessary to meet the intent and purpose of this ordinance.
- B. Approval of a development plan, including conditions made as part of the approval, is attached to the property described as part of the application and not to the owner of such property.
- C. A record of conditions imposed shall be recorded on the development plan and maintained. The conditions shall remain unchanged unless an amendment to the development plan is approved.
- D. A record of the decision of the planning commission, the reason for the decision reached and any conditions attached to such decision shall be kept and made a part of the minutes of the planning commission.
- E. The planning director may require that the applicant revise and resubmit a development plan in compliance with the conditions imposed by the planning commission. The administrator shall require that the applicant revise and resubmit a development plan in compliance with the conditions imposed by the planning commission. The administrator shall have authority to approve the final development plan.

Sec. 19.55. - Permitting procedures following development plan approval.

Following approval of the development plan by the planning commission, the planning director shall issue a zoning permit upon submission of a revised development plan, if required, and if the applicant has met all conditions of approval imposed by the planning commission. For any approved development plan, a zoning permit must be obtained within six months of the development plan approval date, or the development plan shall be deemed null and void without any further action by the city.

Upon written application, filed prior to the termination of the six-month period, the planning commission may authorize a single extension of the time limit for approval of a final development plan for a further period of not more than one year. Such extension shall only be granted based on evidence from the applicant that the development has a likelihood of commencing construction within the extension period, the length of which shall be determined by the planning commission but which shall not exceed one year.

(Ord. of 6-24-2008)

Sec. 19.60. - Permit revocation.

The zoning permit may be revoked by the zoning administrator or planning director if the conditions of the development plan as approved by the planning commission have not been complied with.

Sec. 19.65. - Amendments to approved development plans.

The development plan, if approved, shall become part of the record of approval, and subsequent actions relating to the activity authorized shall be consistent with the approved development plan unless a change or addition conforming to this ordinance receives the mutual agreement of the landowner and the planning commission. Incidental and minor variations of the approved development plan, with written approval of the administrator, shall not invalidate prior development plan approval. Amendments to the approved final development plan may occur only under the following circumstances:

- A. An applicant or property owner who has been granted final development plan approval shall notify the planning director of any proposed amendment to such approved development plan;
- B. Minor changes may be approved by the administrator upon certification in writing to the planning commission that the proposed revision does not alter the basic design, compliance with the standards of this ordinance, nor any specified conditions of the plan as agreed upon by the planning commission. In considering such a determination, the administrator shall consider the following to be a minor change:
 - 1. For residential buildings, the size of structures may be reduced, or increased by up to five percent, provided that the overall density of units does not increase;
 - 2. Square footage of nonresidential buildings may be decreased, or increased by up to five percent or 1,000 square feet, whichever is smaller;
 - 3. Horizontal and/or vertical elevations may be altered by up to five percent;
 - 4. Movement of a building or buildings by no more than ten feet;
 - 5. Designated "areas not to be disturbed" may be increased;
 - 6. Plantings approved in the final development plan landscape plan may be replaced by similar types and sizes of landscaping which provides a similar screening effect on a one-to-one or greater basis, provided they comply with the landscaping standards of this ordinance, with approval of the planning director;
 - 7. Improvements to site access or circulation, such as inclusion of deceleration lanes, boulevards, curbing, pedestrian/bicycle paths, etc., which conform to the requirements of this ordinance;
 - 8. Changes of building materials to another of higher quality, as determined by the planning director;
 - 9. Changes in floor plans which do not alter the character of the use;
 - 10. Slight modification of sign placement or reduction of size;
 - 11. Relocation of sidewalks and/or waste receptacles;
 - 12. Internal rearrangement of parking lot which does not affect the number of parking spaces or alter access locations or design; [and]
 - 13. Changes required or requested by the city for safety reasons shall be considered a minor change;
- C. Should the planning director determine that the requested modification to the approved final development plan is not minor, the planning commission shall be notified in writing that the development plan has been suspended, and, if construction has initiated, a stop work order shall be issued for the section of the project deemed not to be in compliance. Thereafter, the applicant may revise the development plan and submit to the administrator for resubmission to the planning commission;
- D. Should the planning commission determine that the modifications to the final development plan significantly

alter the intent of the preliminary development plan, a new submittal shall be required; [and]

- E. Any deviation from the approved final development plan, except as authorized in this section, shall be considered a violation of this ordinance and treated as a such.

Sec. 19.70. - Appeals.

In instances where specific requirements of this ordinance are not satisfied on the development plan, a request for a variance to such specific requirement(s) may be initiated by the petitioner to the zoning board of appeals, subject to planning commission recommendation on the proposed variance and prior to formal development plan approval. An appeal of a commission decision concerning a development plan shall be made to the Circuit Court of Charlevoix County.

Sec. 19.75. - Property maintenance after approval.

It shall be the responsibility of the owner of the property for which development plan approval has been granted to maintain the property in accordance with the approved site design on a continuing basis until the property is razed, or until new zoning regulations supersede the regulations upon which development plan approval was based, or until a new development plan is approved. This maintenance requirement includes healthy landscaping, walls, fences, pavement, pavement markings, signs, building exterior, drainage facilities and all other elements of a site. Any property owner who fails to so maintain an approved site design shall be deemed in violation of the use provisions of this ordinance and shall be subject to the same penalties appropriate for a use violation. With respect to condominium projects, the master deed shall contain provisions describing the responsibilities of the condominium association, condominium owners, and public entities, with regard to maintenance of the property in accordance with the approved development plan on a continuing basis. The master deed shall further establish the means of permanent financing for required maintenance and improvement activities which are the responsibility of the condominium association. Failure to maintain an approved development plan shall be deemed in violation of the use provisions of this ordinance and shall be subject to the same penalties appropriate for a use violation.

Sec. 19.80. - Performance bond.

- A. The planning commission may require a performance bond from the applicant to insure the completion of improvements considered necessary by the city to protect natural resources, or the health, safety and welfare of the residents of the city. The performance bond is exclusive to those site improvements as defined by the Michigan Zoning Enabling Act and as shown on an approved development plan.
- B. The performance bond shall be in an amount determined by the planning commission or the zoning administrator to be sufficient to accomplish the purposes stated above.
- C. The city may require a cash deposit, certified check, irrevocable bank letter of credit, or surety bond which shall be deposited with the city clerk prior to the zoning permit being issued.
- D. The performance bond shall be proportionally rebated based upon the type and amount of work completed.

(Ord. of 11-27-2007, § 2; Amd. of 11-27-2007, § 2)

ARTICLE XX. - SCHEDULE OF REGULATIONS

Sec. 20.10. - Residential districts.

Zoning District	Minimum Lot Area		Maximum Height of Structure	Minimum Yard Setback (Per Lot In Feet)			Minimum Dwelling Size		Maximum Percentage of Lot Area Covered by All Buildings	
	Area in Square Feet	Width In Feet	In Feet	Front	Sides		Rear	Floor Area In Sq Ft		
					At Least One	Total of Two				
Rural Estate District (RED) n	10,890	100	30	30 c	10 k	30 k	30 l	800 first floor 1,200 if more than one story	24	30%
Traditional Residential District (TRD) n	5,445	50	30	10 c	5 k	15 k	15 l	672 first floor 1,000 if more than one story	24	40%

Waterfront Residential District (WRD) e, l, m, n,	5,445	66	30	35	5 k	15 k	15	672 first floor 1,000 if more than one story	24	30%
Multiple Family Residential District (MFRD) e, l, m, n, g	21,780	100	35	40 d	25 d	50 d	50 d	500	-	30%
Manufactured housing district	See article VII manufactured housing park district.									

(Ord. of 4-10-2018; Ord. of 2-12-2019(2))

Sec. 20.20. - Mixed use and non-residential districts.

Zoning District	Minimum Lot Area		Maximum Height of Structure	Minimum Yard Setback (Per Lot In Feet)				Minimum Floor Area Per Unit (Square Feet)	Maximum Percentage of Lot Area Covered by All Buildings i
	Area in Square Feet	Width In Feet		In Feet	Front j	Sides c, l			
			At Least One			Total of Two			
Professional Office District (POD)	5,445	50	35	10	5	15	15	672	60%

Waterfront Marina District (WMD) e, l, m, n,	5,445	50	35	10	5	15	15	672	60%
Central Business District (CBD)	-	-	45	-	-	-	-	-	100%
Transitional Commercial District (TCD)	5,445	50	<u>2.5</u> 35	10	5	15	15	672	60%
General Commercial District (GCD)	10,890	75	35	10	5 a	15	15 b	-	60%
Regional Commercial/Industrial District (RC/ID)	21,780	100	35	20	10 a	25	25 b	-	60%
Planned Industrial District (PID)	21,780	100	35	50	25 a	50	25 b	-	40%
Community Service District (CSD) f, n	5,445	50	35	10	5	15	15	672	40%
Flood hazard district (FHD)	All structures shall be set back a minimum of 15 feet from the 100-year floodplain. See article XVI Flood Hazard District for the remaining regulations.								

(Ord. of 2-12-2019(2))

Sec. 20.30. - Notes for schedule of regulations.

The following letters refer to the charts containing the schedule of regulations in sections 20.10 and 20.20:

- a. Except for section 21.46 C., all side yards abutting residentially zoned land shall have a minimum distance of twice the one yard requirement;
- b. All rear yards abutting residentially zoned land shall have a minimum distance of 50 feet between the principal building and rear property line;
- c. Parking shall not be permitted in any required front yard, notwithstanding off-street parking requires in CBD and PID districts;
- d. Multiple family dwellings which have all off-street parking provided behind the dwelling and have the main entrance to the building facing a public street may reduce required minimum yard setbacks (per lot in feet) as

follows:

Front	Sides		Rear
	Least One	Total of Two	
5	-	-	30

- e. The planning commission may waive these standards if it determines it is necessary, in order to preserve public views and scenic vistas from being unreasonably obscured by development of lakeside properties or properties near bodies of water, to allow flexibility in the siting and construction of new buildings in such zoning districts;
- f. The planning commission may waive these standards if it determines it is necessary for the development of a site to be compatible with surrounding uses and buildings if such a site is adjacent to the CBD;
- g. Single-family detached dwellings shall comply with the applicable height and setback standards for the TRD listed in section 20.10;
- h. The total floor space in all buildings on the lot may not exceed 1½ times the total net lot area (floor area ratio of 1.5);
- i. The minimum floor area per dwelling unit shall not include areas of basements, breezeways, unenclosed porches, terraces, attached garages, attached sheds or utility rooms;
- j. In all zoning districts, except the CBD and PID districts, the required front yard setback shall not be used for off-street parking, loading or unloading, and shall remain as open space, unoccupied and unobstructed from the ground upward, except for landscaping, plant materials or vehicle access drives; unless use of the front yard setback for off-street parking is determined necessary by the planning commission due to the size and configuration of the lot;
- k. In all residential districts, the width of side yards which abut upon a street on the same side or on the opposite side of the same block, upon which other residential lots front, shall not be less than the required front yard setback for homes which front upon such side street;
- l. No rear yard or side yard setback is required where such property abuts a public alley, providing that accessory buildings in the rear yard shall meet the required setback;
- m. Setbacks.
 - 1) Waterfront setback: For the purposes of this ordinance the waterside of the structure shall be considered the front yard; except for docks, shoreline protection structures and walkways six feet or less in width, all other structures shall be located a minimum of 35 feet upland from the high water elevation as defined;
 - 2) Wetland setback: All structures or additions to existing structures shall be set back a minimum of 25 feet from areas defined as wetlands in the Boyne City Comprehensive Plan; [and]
 - 3) Road setback: For the purposes of this ordinance the road side will be considered a rear yard and subject to the provisions of article XX;
- n. Height, area, lot coverage and yard regulatory is specified in article XX of this ordinance with the following exception: Within the area described as follows: from the edge of Lake Charlevoix along the centerline of West Michigan Avenue to the centerline of North Lake Street to the intersection of Lower Lake Street, building height

shall be defined as the vertical distance measured from the highest point of the finished grade adjacent to the building (excluding berms, flower boxes, and other similar increases in elevation) to the highest point of the roof of the building (excluding chimneys, antennas, and similar items) and such building height in this area shall not exceed 30 feet.

- o. The minimum combined side yard setbacks for buildings and structures on waterfront parcels shall not be less than 30 percent of the width of the corresponding cross section of the parcel. The percentage used for each side yard setback shall be consistent along the entire length of each side yard. Additionally, side yard setbacks may not be less than the minimum setback as listed for the district as required by this section unless specifically allowed by other provisions of the ordinance from which this section was derived.

(Ord. of 12-16-2008, § 3; Ord. of 4-10-2018)

ARTICLE XXI. - GENERAL STANDARDS AND EXCEPTIONS

Sec. 21.00. - Application.

General requirements and standards apply to all districts except as noted herein. Where requirements of a general regulation and a district regulation differ, the more restrictive requirement shall prevail.

Sec. 21.02. - Use of buildings and land.

No building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used, designed or arranged, for any purpose other than is permitted in the district in which the building or land is located. No building shall be erected, converted, enlarged, reconstructed or structurally altered except in conformity with the area regulations of the district in which the building is located.

Sec. 21.04. - Exceptions to height limitations.

A roof structure for the housing of elevators, stairways, tanks, ventilation fans or similar equipment required to operate and maintain the building, fire or parapet walls, skylights, individual domestic radio and television aerials, wireless communication facilities, and wireless masts, electrical transmission and communication poles and towers, theater screens, steeples, flagpoles, chimneys, smokestacks, wireless masts, water tanks, grain elevators, silos, gas containers, industrial installation requiring a vertical production procedure such as flour mills, steel mills and refineries, or similar structures may be erected above the height limits herein prescribed, but no such structures shall be allowed for the purpose of providing additional floor space for residential, business or industrial use.

No such structure may be erected to more than twice applicable the height limits of the district in which it is located. No such structure shall have a total area greater than 25 percent of the roof area of the building. Such structures shall be screened by a solid wall, landscaping, and/or architectural features that are compatible in appearance with the principal building. No such structure shall be used for any residential purpose or commercial purpose, other than a use incidental to the main use of the building.

Sec. 21.06. - Exceptions to area and width requirements.

- A. *Recorded lots.* Lots established by a legally recorded plat or deed prior to the adoption of this ordinance which have less than the minimum area or width requirements established by this section, may nevertheless be used for any use permitted within the district in which such lot is located. In addition, lots established by a recorded plat or deed

subsequent to the adoption of the ordinance and which met the requirements of said ordinance, but as a result of amendments thereto can no longer meet the minimum area or width requirements, may nevertheless be used for any use permitted within the district in which such lot is located.

- B. *Lack of public utilities.* In areas unserved by public or other approved community water and/or sewage facilities, the minimum lot areas required by these regulations shall be increased to include any additional area deemed necessary by the state or county boards of health to insure safe water supply and/or adequate sewage disposal.

Sec. 21.08. - Number of buildings on a lot.

Every building hereinafter erected or structurally altered shall be located on a lot herein defined and there shall be not more than one main building on one lot unless otherwise provided in this ordinance. Exceptions to the aforementioned requirement include multiple-family dwellings in a multiple-family residential district (MFRD), or a development using the open space community option.

No lot may contain more than one principal building, structure or use, excepting groups of multiple-family dwellings, site condominiums as approved under the provisions of this ordinance, or retail business buildings or other groups of buildings the planning director/zoning administrator deems to be a principal use collectively.

Sec. 21.10. - Attachments to main buildings.

Accessory buildings or structures, including, but not limited to, porches enclosed by walls, or garages, attached to a dwelling unit or other principal building in a substantial manner, such as by a wall or roof, shall be deemed a part of such main building for the purpose of determining compliance with the provisions of this chapter concerning required yards.

Sec. 21.12. - Frontage on streets required.

No dwelling unit shall be built, moved or converted upon a lot having a frontage of less than 20 feet upon a public street, or upon a private street or other permanent easement giving access to a public street. No zoning permit shall be issued for any construction located on any lot or parcel of land in the city that does not abut on a public street or highway or have access to a public street or highway. All access to a public street, or upon a private street or other permanent easement giving access to a public street shall be hard surfaced with concrete or plant-mixed bituminous material, and shall meet the requirements of [section 24.60 G.](#), off-street parking and loading. However, this ordinance shall not be the basis for preventing the issuance of a building permit for ordinary repair or maintenance of any building that is already erected on the date of adoption of this ordinance upon a lot or parcel of land that does not so abut such a street or highway.

Sec. 21.14. - Front yard requirements.

Each lot shall have a front yard with a minimum depth measured from, and parallel to, the front right-of-way line, existing or proposed, whichever is greater. Where a front yard of greater or less depth than specified exists in front of a dwelling on one side of a street in any block in a traditional residential district (TRD), the depth of the front yard of any building thereafter erected or placed on any lot in such block shall be not less, but need not be greater, than the average depth of the front yards of existing dwellings.

Sec. 21.16. - Location of dwellings.

No residential structure shall be erected upon the rear of a lot. Structures in residential districts shall be set back no further than the average front setback of 50 percent of the structures upon the same block, as determined by the planning director. Appeals of such determination shall be resolved by the planning commission. No residential structure shall be erected upon a

lot with another dwelling unless otherwise provided by this ordinance.

Sec. 21.17. - Reserved.

Editor's note— Ord. of 12-16-2008, § 4, repealed § 21.17, which pertained to viewshed of the lake, and derived from Ord. No. A-80.

Sec. 21.18. - Corner lot, side yard width to the side street line.

In the case of a corner lot, the side yard width to the side street line shall be equal to the front yard depth requirement for the district in which the lot is located. In no case shall the side yard width to the side street line be less than 20 feet, unless provided for in another district, such as the CBD.

Sec. 21.19. - Waterfront overlay regulations.

A. *Purpose.* The purpose of these overlay provisions shall be to regulate the development and redevelopment of waterfront properties within the city while to the maximum extent feasible:

1. Protecting water quality through increased setbacks;
2. Maintaining a scale of development which is in keeping with small lot sizes and/or adjacent structures; and
3. Minimizing the visual impact of waterfront development from the water.

[B.] *Delineation of the waterfront overlay district.* These overlay provisions shall cover all lots, site condominium units or any projects which front on or directly access wetlands, as defined in the Boyne City Comprehensive Plan, and rivers or lakes within the city, including, but not limited to Lake Charlevoix, the Boyne River and Mud Lake. These regulations shall be in addition to other provisions of this ordinance.

[C.] *Zoning and use regulations.*

1. Permitted and conditional uses shall be those uses permitted in the respective zoning district(s) in which a proposed project lies with the exception, in the waterfront overlay district, additional two-family and multifamily residential dwellings shall be prohibited. Action to create this Waterfront Overlay District shall not be interpreted to create nonconforming structures and uses which were existing at the time of enactment of this Ordinance A-80. Those lawfully existing two-family and multifamily dwellings shall be subject to, and still have to conform to, the requirements of each respective zoned district in which property is located. Those aforementioned existing structures will be allowed to be reconstructed and updated on the existing foundation, but not expanded. Garages, decks and open porches, which meet the requirements of each specific zoned district, may be added to those multifamily and duplex structures, which were lawfully existing at the time of enactment of this amendment, and are located in the waterfront overlay district.
2. Water front setback: For the purposes of this ordinance the water side of the structure shall be considered the front yard. Except for docks, shoreline protection structures and walkways six feet or less in width, all other structures shall be located a minimum of 35 feet upland from the high water elevation as defined.
3. Wetland setback: All structures or additions to existing structures shall be set back at least 25 feet from areas defined as wetlands in the Boyne City Comprehensive Plan or from wetlands as determined by a qualified wetland consultant or the department of environmental quality (DEQ).
4. Side yard setback: Determined by the district in which the construction is proposed and shall take into account the regulations in section 21.17 and the regulations set forth in article XX.
5. Road setback: For the purposes of this district, the road side of a property will be considered a rear yard and

subject to the requirements of article XX, if a road is present. If no road is present, that side opposite the water shall be considered the rear yard and subject to article XX.

6. For property zoned RED, TRD, WRD and CSD, a soil erosion plan and a stormwater plan submitted to and approved by the Charlevoix County Soil Erosion Officer shall be required prior to obtaining a zoning permit. For property zoned WMD, MFRD, and CBD an engineered stormwater plan meeting the requirements of the Charlevoix County Soil Erosion Sedimentation and Stormwater Runoff Control Ordinance shall be required prior to obtaining a zoning permit.
7. River corridors: For property located within the CBD, setbacks shall be 15 feet from the 100-year floodplain.

Sec. 21.20. - Illegal dwellings.

The use of any portion of the basement of a partially completed building, or any garage or accessory building for dwelling or sleeping purposes in any zoning district is prohibited. No dwelling unit shall be erected in an industrial district. However, the sleeping quarters of a watchman or a caretaker may be permitted in an industrial district in conformity with the specific requirements of the particular district.

Sec. 21.22. - Yards apply only to one building.

- A. No required yard or other open space around an existing building, or which is hereafter provided around any building for the purpose of complying with the provisions of this ordinance shall be considered as providing a yard or open space for any other building; nor shall any yard or other required open space or any lot be considered as providing a yard or open space for another lot whereon a building is to be erected.
- B. No lot, adjacent lots in common ownership, required yard, parking area or other required open space shall be created, divided or reduced in dimensions or area below the minimum requirements of this ordinance. If already less than the minimum requirements of this ordinance, a lot or adjacent lots in common ownership or a required yard, parking area or other open space shall not be divided or reduced in dimensions or area so as to increase its noncompliance with the minimum requirements of this ordinance. Lots or yards created after the effective date of this chapter shall comply with the requirements of this chapter.
- C. In determining whether or not the minimum open space requirements of this ordinance have been met, the planning director shall consider and count any area of land owned by the developer adjacent to the property for which plans for the development of a building have been submitted, which land lies between the outside edge of an easement for a City of Boyne City or a Charlevoix County drain and the centerline of the drain proper. If the parcel to be so developed is dissected by any such drain, the planning director shall consider and count the entire area affected by the easement of the drain, provided that such surface area shall not be utilized for permanent structures or any other improvements of the drain and provided, further, that in no event shall the area lying within any such drain easement be considered or counted for more than 20 percent of the total minimum open space requirement of this ordinance.
- D. In any residential district, the front and rear yard requirements of a double frontage lot shall be the same as prescribed for any single lot in the zone wherein the double frontage lot is located.

Sec. 21.24. - Corner visibility.

No structure, fence, wall, hedge, planting, tree or other obstruction to vision in excess of 2½ feet in height shall be erected or maintained on that part of the corner residential lot that is included between the lines of intersection of street rights-of-way and a line intersecting them at points of 25 feet distance from the intersection of the street lines. Branches of trees within such areas shall be trimmed to not less than eight feet above street level.

Sec. 21.26. - Other protections into yards.

- A. *Cornice, sill, chimney or fireplace.* A cornice, eave belt course, sill, canopy or other similar architectural feature (not including bay window or other vertical projection which shall be a part of the main building) may extend or project into a required side yard not more than two inches for each one-foot of width of such side yard and may extend or project into a required front or rear yard not more than 36 inches. Chimneys or fireplaces may project into a required front, side or rear yard not more than two feet, provided the width of such side yard, is not reduced to less than five feet.
- B. *Fire escape.* A fire escape may extend or project into any front, side or rear yard not more than four feet.
- C. *Open stairway or balcony.* An open, unenclosed stairway or balcony, not covered by a roof or canopy may extend or project into a required rear yard not more than six feet and such balcony may extend into a required front yard not more than six feet.
- D. *Porch, open.* An unenclosed platform or landing which does not extend or project into any required front, side or rear yard not more than eight feet is exempted from yard requirements provided that the width of a side yard is not reduced to less than five feet. An overhang, canopy, or portico may be placed over the open porch, but it shall not be enclosed.

Sec. 21.28. - Fence, walls, hedges, or other specified plantings or structures.

- A. *Fences, walls, or hedges.* Fences, walls and hedges may be permitted in any yard, or along the edge of any yard. The height of fences, walls, and hedges shall not exceed six feet in any side or rear yard. An industrial fence may be permitted up to eight feet in height along the side or front of a front yard providing it does not constitute an obstruction for motor vehicles. In all other districts no fence, wall, or hedge along the side or front of any front yard, or in front of the side building line of a corner lot shall be over 3½ feet along the side or front of a front yard providing it does not constitute an obstruction for motor vehicles. A security fence for a permitted use may include a maximum of one additional foot of barbed wire in an industrial district only.
 - [1.] No fence shall be erected or maintained in such a way as to obstruct the vision of motorists exiting driveways. No fence or wall in a front yard on a corner lot, within a triangular section of land formed by the two street right-of-way line and a line connecting them at points 25 feet from the intersection of such right-of-way line shall exceed 30 inches in height above the curb level.
 - [2.] Fences may be placed up to a lot line. No parts of any fences, including foundations, may extend beyond any lot line.
 - [3.] No chainlink fence shall be erected in any front yard within a residential district, unless enclosing a retention pond that has been approved by the planning commission.
 - [4.] The finished sides of fences in the rear or side yard may face towards or away from the property on which they are placed. If a fence exists in the rear or side yard of an adjacent lot, only one other fence may be placed along the adjoining boundaries of such adjacent lot. Areas between abutting fences must be maintained in accordance with this ordinance and the city's Code of Ordinances.
 - [5.] No fence, wall or screen shall be erected within any public right-of-way.
 - [6.] The use of electric current or charge on any fence or part thereof is prohibited. Electronic fences buried beneath the ground are not regulated by this section.
- B. *Trees, shrubs, flowers or plants.* Trees, shrubs, flowers or plants shall be permitted in any front, side or rear yard, provided it does not violate the corner setbacks as set forth in this section.

- C. *Other specified structures.* Walls, driveways, curbs, retaining walls, mailboxes, nameplates, lampposts, birdbaths and structures of a like nature shall be permitted in any front, side or rear yard.
- D. *Swimming pools, private.* Private pools shall be completely surrounded by a fence of not less than four feet. Aboveground swimming pools need not be fenced if their side walls are at least four feet in height, or when a fence is secured on top of the side pool walls to a minimum of four feet in height as measure from ground level. All swimming pool fences or walls shall be constructed as to have no openings larger than four inches in dimension, except for doors and gates. All doors and gates shall be self-latching and self-closing.

Sec. 21.30. - Rubbish and waste material.

It shall be unlawful throughout the city to openly store, collect or place garbage, discarded building materials, refuse, junk, inoperable and unlicensed motor vehicles, or other similar materials, except upon land owned and operated as a state approved solid waste site.

Sec. 21.32. - Grades.

No premises shall be filled or grades established so as to discharge the surface runoff on abutting property in such a manner that will cause inconvenience or damage to adjacent properties.

Sec. 21.34. - Access through yards.

Access drives may be placed in the required front or side yards so as to provide access to a rear yard. Further, any walk, terrace or other pavement serving a like function shall be permitted in any required yard.

Sec. 21.36. - Accessory buildings and structures.

Accessory buildings and structures, except as otherwise permitted in this ordinance, shall be subject to the following regulations:

A. *General standards.*

1. Accessory buildings, structures and uses are permitted only in connection with, incidental to and on the same lot with a principal building, structure or use. An accessory building, structure or use must be in the same zoning district as the principal building, structure or use on a lot.
2. No accessory building, structure or use shall be occupied or utilized unless the principal structure is occupied or utilized. No accessory building, structure or use may be placed on a lot without a principal building, structure or use.
3. Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to all regulations of this ordinance applicable to main or principal buildings.
4. An accessory building not exceeding 20 feet in height may occupy not more than 30 percent of the required rear yard; provided that no accessory building shall be closer than three feet to the side or rear property line of the required rear yard.
5. All accessory buildings, structures and uses combined shall cover no more than 50 percent of any rear yard, subject to setback, lot coverage and other standards of this ordinance. Accessory buildings shall not be erected in any required yard, except in a rear yard, except that accessory buildings, structures and uses may be erected in any required side yard when set back a minimum of 75 feet from the front lot line. No accessory building, structure or use shall be erected in any yard with public street right-of-way frontage,

including all such sides of a corner lot. In no instance shall such a building be nearer than three feet to any adjoining lot line, except that on a corner lot the entrance to a garage shall not be less than eight feet from the lot line adjacent to the side street, except as otherwise permitted herein.

6. An accessory building, not exceeding one story or 14 feet in height, measured from grade to the roof peak, may occupy not more than 25 percent of a required rear yard plus 40 percent of any nonrequired rear yard, provided that in no instance shall the accessory building exceed the ground floor area of the principal building.
 7. No detached accessory building shall be located closer than ten feet to any main or principal building, nor shall it be located closer than three feet from any side or rear lot line or public street right-of-way.
 8. In the case of double frontage lots, accessory buildings shall observe front yard requirements on both street frontages wherever there are any principal buildings fronting on such streets in the same block or adjacent blocks.
 9. In the case of an accessory building located in the rear yard on a corner lot, the side lot line of which is substantially a continuation of the required front yard setback of the lot to its rear, such accessory building shall be set back from the street side at least as far as the required front yard setback of the lot at the rear of the subject corner lot.
 10. The total area occupied by a detached accessory building, other than a garage on the lot, shall not exceed 150 square feet. No accessory building may be closer than four feet to any other accessory building.
- B. *Garages.* In any residential district, no garage shall be erected closer to the side lot line than the permitted distance for the dwelling, unless the garage is completely to the rear of the dwelling, in which event the garage may be erected three feet from any interior side lot line. No garage or portion thereof shall extend into the required front yard area. Attached garages of fireproof construction may be erected to extend beyond the front line of the house in those areas which are being developed according to a common plan that includes the construction of attached garages extending beyond the front line of the house, provided that such garages shall not encroach in or upon the minimum front yard area as required by this ordinance.
- No garage, utility building or accessory building shall be constructed upon or moved to any parcel of property until the principal building thereon, or intended to be placed thereon, is at least two-thirds completed.
- C. *Mechanical equipment.* Mechanical equipment, such as blowers, ventilating fans and air conditioning units, shall be placed not closer than three feet to any lot line in any business district, and not closer than 12 feet to any lot line in all other districts.
- D. *Flagpoles.* Flagpoles in single-family residential districts shall be not exceed 40 feet in height and may be illuminated; provided the source of illumination is designed, located, and shielded to prevent glare onto adjacent properties, and shall be arranged to prevent adverse affects on motorist visibility on adjacent rights-of-way.
- Flagpoles in other than single-family residential districts shall not exceed 100 feet in height and may be illuminated provided the source of illumination is designed, located, and shielded to prevent glare onto adjacent properties, and shall be arranged to prevent adverse affects on motorist visibility on adjacent rights-of-way.

Sec. 21.38. - Accessory uses and buildings in business and industrial districts.

In business and industrial districts, accessory buildings and uses may occupy any of the ground area which the principal buildings is permitted to cover. Accessory buildings such as buildings for parking attendant, guard shelters, gatehouses and transformer buildings may be located in the front or side yard of industrial districts.

Sec. 21.40. - Zoning permits issued prior to effective date.

Any building or structure for which a zoning permit has been issued and the construction of the whole or a part of which has been entered into pursuant to a building permit issued prior to the effective date of this ordinance may be completed and used in accordance with the plans and applications on which said building permit was granted.

A building which is lawfully under construction at the time of adoption of this ordinance shall be allowed to be completed within one year of the passage of this ordinance. Adoption of this ordinance shall not require any changes to the plans, construction or designated use of any such buildings.

Sec. 21.42. - Restoration of unsafe buildings.

Nothing in this ordinance shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the planning director, or required compliance with his lawful order.

Sec. 21.44. - Conditions for plat approval.

No proposed plat of a new subdivision shall hereafter be approved by city commission unless the lots within such plat equal or exceed the minimum size and width requirements set forth in the various zoning districts, and unless such plat fully conforms with the statutes of the state, this ordinance, and the subdivision control ordinance and the city's construction standards.

Sec. 21.46. - Automotive fueling stations, service stations, repair centers, and public garages.

- A. *Purposes.* In order to regulate and control the problems of noise, odor, light, fumes, vibration, dust, danger of fire and explosion and traffic congestion, which result from the unrestricted and unregulated construction and operation of automotive fueling stations, service stations and repair centers, and to regulate and control the adverse effects which these and other problems incidental to automotive fueling stations, service stations and repair centers may exercise upon adjacent and surrounding areas, the following regulations and requirements are provided for automotive fueling stations, service stations and repair centers located in any zoning district. All automotive fueling stations, service stations and repair centers erected after the effective date of this ordinance shall comply with this section. No automotive fueling station, service station or repair center existing on the effective date of this ordinance shall be structurally altered so as to provide a lesser degree of conformity with this section than existed on the effective date of this ordinance.
- B. *Minimum area and frontage.* An automotive fueling station, service station or repair center shall be located on a lot having a frontage along the principal street of not less than 150 feet and having a minimum area of 15,000 square feet.
- C. *Setbacks.* An automotive fueling station, service station or repair center building housing an office and/or facilities for servicing, greasing and/or washing motor vehicles shall be located not less than 40 feet from any street lot line and not less than 50 feet from any side or rear lot line directly adjoining a residentially zoned district. In cases where the side or rear line abuts an open public alley the structure may be constructed on such property line.
- D. *Driveway and curbs.*
 1. All driveways providing ingress to or egress from an automotive fueling station, service station or repair center shall comply with the standards of this ordinance, and shall not be more than 30 feet wide at the property line. Not more than one curb opening shall be permitted along any street. No driveway or curb opening shall be

- located nearer than 20 feet to any corner or exterior lot line, as measured along the property line. No driveway shall be located nearer than 30 feet, as measured along the property line, to any other driveway.
2. A raised concrete curb, six inches in height, shall be erected along all street lot lines, except for driveway openings.
- E. *Paved areas.* The entire lot, excluding the area occupied by a building, shall be hard surfaced with concrete or a plant-mixed bituminous material, except desirable landscaped areas which shall be separated from all paved areas by a raised concrete curb, six inches in height.
- F. *Equipment location.* All lubrication equipment, motor vehicle washing equipment, hydraulic hoists and pits shall be enclosed entirely within a building. All gasoline and fuel pumps shall be located not less than 15 feet from any lot line and shall be arranged so that motor vehicles shall not be supplied with gasoline or serviced while parked upon or overhanging any public sidewalk, street or right of way.
- G. *Number of pumps.* An automotive fueling station, service station or repair center located on a lot having an area of 15,000 square feet shall include not more than four double gasoline and fuel pumps or eight single gasoline and fuel pumps and two enclosed stalls for servicing, lubricating, greasing and/or washing motor vehicles. An additional two gasoline and fuel pumps and/or one enclosed stall may be included with the provision of each additional 2,000 square feet of lot area.
- H. *Screening.* Where an automotive fueling station, service station or repair center adjoins property located in any residential district, a greenbelt, berm, or buffer strip, shall be erected and maintained along the interior lot line, or if separated from the residential district by an alley, then along the alley lot line. In addition, all trash areas or used tires, automotive parts and other items shall be screened.
- I. *Lighting.* All exterior lighting, including illuminated signs, shall be erected and hooded or shielded so as to be deflected away from adjacent and neighboring property, and shall comply with all requirements of this ordinance.
- J. *Prohibited locations.* No automotive fueling station, service station, repair center, or public garage shall be located nearer than 200 feet, as measured from any point on the property line, to any school, playground, church, hospital or other such use where large numbers of people congregate.
- K. *Outdoor storage and parking.* All repair work shall be conducted completely within an enclosed building. There shall be no storage of vehicle components and parts, trash, supplies or equipment outside of a building. Outdoor storage or parking of vehicles or trailers, other than private passenger automobiles, shall be prohibited between 10:00 p.m. and 7:00 a.m. of the following day, except that equipment rental operations shall be permitted if incidental to the automotive fueling and/or service station or repair center, and if restricted to travel trailers or campers of under 21 feet overall length, car-top carriers and similar auto accessories. Such operations shall be within fenced enclosures observing the same setbacks as required for buildings in the zoning district wherein the automotive fueling and/or service station or repair center is located, and their storage area shall not exceed 20 percent of the area of the service station or repair center site.
- L. *Removal of underground storage tanks.* In the event that an automobile service station use has been abandoned or terminated for a period of more than one year, all underground gasoline storage tanks shall be removed from the premises.

Sec. 21.48. - Grading.

A minimum sloping grade of one foot above the street level, or other grade established by the city, shall be required of all buildings having a front yard space. Where front yard space is provided in excess of 25 feet, the grade may be increased an additional one-fourth inch for each foot of additional front yard space to 50 feet. In no case shall the grade exceed 18 inches

above the street. All rear yards shall be graded so as to provide a gradual sloping grade from the rear wall of the building to the rear lot line. The grade at the rear wall shall be substantially the same as that established at the front wall. The grade at the rear lot line shall be that as established by the planning director.

Sec. 21.50. - Temporary buildings, structures and uses for construction or special events.

Temporary principal or accessory buildings, structures and uses may be permitted, subject to the following conditions:

- A. Temporary buildings and structures may only be used for the storage of construction materials, tools, supplies and equipment, for construction management and supervision offices, and for temporary on-site sanitation, solid waste or fuel facilities related to construction activity on the same lot;
- B. No temporary building or structure shall be used as a dwelling unit;
- C. The placement of temporary buildings and structures shall be in conformance with the requirements of this ordinance. A zoning permit for such building or structure shall be issued by the planning director prior to installation;
- D. Temporary buildings and structures shall be removed from the lot within 15 days after an occupancy permit is issued by the planning director for the permanent structure on such lot, or within 15 days after the expiration of a building permit issued for construction on such lot;
- E. Temporary uses and seasonal or special events (including carnivals, circuses, former markets, flea markets) may be allowed in any district upon issuance of a permit, when meeting the standards listed below and in compliance with subparagraph (3) of this section:
 1. Seasonal sales events may be allowed on any lot with a permitted principal building. Seasonal sales may also be allowed on a vacant lot when providing the minimum setback for buildings, structures and parking required for the appropriate zoning district. In no case shall the setbacks for buildings, structures and parking be less than ten feet;
 2. If the petitioner is not the owner of the property, the petitioner shall provide written permission of the owner of the property to allow such an event;
 3. Special standards for temporary uses and seasonal or special events:
 - a. Approval for these types of uses shall be by city commission. The city commission shall consider the intensity of the proposed use in relation to adjacent land uses and sufficiency of parking. city commission may require site improvements, such as fencing, and restrict hours of operation to help ensure compatibility with surrounding land uses;
 - b. The applicant shall provide information establishing a reasonable liability insurance coverage is carried, as determined by the city's insurance carrier;
 - c. The sketch plan for the event shall include a description of traffic flow and parking management to ensure safe and efficient traffic operations without creating unreasonable congestion on public streets; [and]
 - d. Farmers markets which are to occur on a regular schedule shall be permitted only in districts zoned commercial or on public land. [The] city commission may extend the time period for the temporary use permit so that a separate permit is not required for each event within any one calendar year; provided the number of dates and a schedule are established at the time of application;
 4. One parking space shall be provided for each 800 square feet of gross lot area used for the activity (not including storage areas) plus additional parking space for any structure utilized for retail sales computed in

accordance with the requirements for retail stores;

5. A sketch plan (to scale) shall be provided illustrating, if applicable:
 - a. Property lines;
 - b. Adjacent uses and zoning districts;
 - c. Existing and proposed buildings and structures;
 - d. Location of any areas for storage such as inventory not being displayed;
 - e. Fire hydrants;
 - f. Layout of parking;
 - g. Boundaries of proposed sales areas; [and]
 - h. The location and size of any proposed sign (off-premise signs shall also be mapped);
 6. All equipment, materials, goods, poles, wires, signs and other items associated with the temporary uses shall be removed from the premises within five days of the end of the event. Following the five-day period, the city shall use the escrow fee to clear such items from the property; [and]
 7. The length of a temporary use or sales event shall not exceed seven days, except that sales of Christmas trees are permitted for up to 60 days;
- F. Review and approval procedures, permit fees and required escrow for temporary uses and sales events:
1. Except as otherwise noted above for carnivals, circuses, farmers markets and similar events as defined by the planning director, the planning director shall review and approve requests for a temporary use or seasonal event. Where appropriate, the planning director shall consult with the police chief and fire chief. If the request is denied, the planning director shall state the reasons for denial in writing and provide a copy to the applicant;
 2. The applicant shall pay a nonrefundable permit fee to the city treasurer. The fee shall be established and modified, from time to time, by city commission. The amount of the permit fee may vary depending upon the type of event;
 3. The proprietor of the temporary use or seasonal event may be required to deposit a cash bond or similar type of escrow, in an amount established by city commission, prior to the issuance of a permit. The escrow shall be used by the city to pay the cost of returning the property to its state prior to commencement of the event or refunded to the proprietor upon compliance with the requirements of this ordinance and any other applicable ordinances; [and]
 4. [The] city may waive these requirements if it deems the requirements unnecessary.

Sec. 21.52. - Essential public services.

- A. Essential public services shall be permitted in any zoning district as authorized and regulated by law and other provisions of this ordinance and the city's Code of Ordinances, it being the intention hereof to exempt such essential services from the application of this ordinance.
- B. The board of appeals may permit the erection and use of a building, or an addition to an existing building, of a public service corporation or for public utility purposes, in any permitted district to a greater height or of a larger area than the district requirement herein established, and may permit the location in any use district of a public utility building, structure or use, if the board finds such use, height, area, building or structure reasonably necessary for the public convenience and services, and if such building, structure or use is designed, erected and landscaped to conform harmoniously with the general architecture and plan of such district.

Sec. 21.54. - Signs.

- A. *Generally.* The erection, construction or alteration of outdoor advertising structures, billboards, signs and other notices which advertise a business, commercial venture or name of a person shall be approved by the planning director as to compliance with the city's Sign Ordinance and this ordinance.
- B. *Real estate signs.* Signs advertising real estate in the city for sale or rent are permitted in all zoning districts; provided that all real estate advertising signs are used only during the construction of a building or the offering for sale or rental of real estate, and provided further that they are not larger than ten square feet in area and are only located on the property that is being offered for sale.

Sec. 21.56. - Screening.

In order to provide adequate protective screening for residential areas adjacent to or near nonresidential areas, the following regulations shall apply:

- A. Where a business or industrial district abuts directly upon a residential district, a landscaped greenbelt meeting the landscaping standards of article XXIII, shall be provided and maintained along its entire length by the users of the business or industrially zoned property.

The remainder of the landscaped area which is not planted with evergreens as provided in this subsection shall meet the requirements of this ordinance, and be in well kept lawns. All landscaping shall be maintained in a healthy growing condition, neat and orderly in appearance. All planting plans shall be first submitted to the planning commission for approval as to suitability of planting materials and arrangements thereof in accordance with this subsection and this ordinance.

When vehicles, open air displays, waste receptacles, or other features generally exceed a six-foot height, the screening shall be increased to a height adequate to completely screen such features not exceeding ten feet. All such walls shall be of uniform height around the premises and the design of such wall shall be first approved by the planning commission.

- B. Where required screening is provided on the business side of public alleys, wall requirements may be waived to provide necessary entrance to or exit from required off-street parking and loading areas, provided the parking area is in midblock with no possibility for street ingress or egress, and provided, further, that such opening, if approved by the police department, the department of public works, and the planning commission, shall be stepped down to a three-foot level for a minimum of ten feet on each side of the opening.

Sec. 21.58. - Protection of excavations.

The construction, maintenance or existence within the city of any unprotected, unbarricaded, open or dangerous excavations, holes, pits or wells, or of any excavations, holes or pits which constitute or are reasonably likely to constitute a danger or menace to the public health, safety or welfare, are prohibited. However, this section shall not prevent any excavation under a permit issued pursuant to this ordinance or the county's building code where such excavation is properly protected and warning signs are posted in such a manner as may be approved by the planning director. Excavation required for swimming pools is excepted from excavating provisions of this section provided that all necessary permits are obtained and the pool is constructed within 30 days of the excavation. Excavation and site preparation for building foundations is excepted from the excavating provisions of this section provided that such work is considered incidental to building construction and all necessary permits have been obtained.

Sec. 21.60. - Certificates required for excavations; bonds.

The use of land for the excavation, removal, filling or depositing of any type of earth material, topsoil, gravel, rock, garbage, rubbish or other wastes or byproducts is not permitted in any zoning district, except under a certificate from, and under the supervision of, the planning director in accordance with a topographic plan, approved by the department of public works director, submitted by the fee-holder owner of the property concerned. The topographic plan shall be drawn at a scale of not less than 50 feet equals one inch and shall show existing and proposed grades and topographic features and such other data as may from time to time be required by the city. Such certificate may be issued in appropriate cases, upon the filing with the application of a cash bond or surety bond by a surety company authorized to do business in the state, running to the city, in an amount as established by the city, which bond will be sufficient in amount to rehabilitate the property upon default of the operator of such other reasonable expenses. This regulation does not apply to normal soil removal for basement or foundation work when a building permit has previously been duly issued by the planning director.

Sec. 21.62. - Storage and repair of vehicles in residential districts.

- A. The carrying out of repair, restoration and maintenance procedures or projects on vehicles in any residential zoning district, when such work is not conducted entirely within the interior of the vehicle, shall be subject to the following limitations:
 - 1. Procedures exceeding 48 hours in duration or which require the vehicle to be immobile or inoperable in excess of 48 hours shall be carried out within an enclosed building;
 - 2. Inoperable vehicles, vehicle parts, equipment, tools, and supplies shall be stored within an enclosed building; [and]
 - 3. Only vehicles owned or operated by a member of the immediate family residing at a given residence may be repaired, restored, maintained, or stored at that residence at any given time, whether or not such work is conducted entirely within the interior of the vehicle.

Sec. 21.64. - Drive-in and drive-through establishments.

- A. When a drive-in or drive-through establishment adjoins property located in any residential district, a solid masonry wall, ornamental on both sides, six feet in height, or a greenbelt, berm, or buffer strip, shall be erected and maintained along the interior line, or if separated from the residential zone by an alley, then along the alley lot line. In addition, all outside trash areas shall be enclosed by such six-foot masonry wall or greenbelt. Such walls shall be constructed of the same materials as that of the main or principal building, and be faced with either brick, decorative block, or precast concrete formed into a decorative pattern and painted in the same color scheme as that of the principal building. Such wall shall be protected from possible damage inflicted by vehicles using the parking area by means of precast concrete wheel stops at least six inches in height, or by firmly implanted bumper guards not attached to the wall, or by other suitable barriers.
- B. The entire parking area shall be paved with a permanent surface of concrete or plant-mixed bituminous material and shall be graded and drained in accordance with this ordinance. Any unpaved area of the site shall be landscaped with lawn or other horticultural materials, maintained in a neat and orderly fashion at all times and separated from the paved area by a raised concrete curb, six inches in height.
- C. Lighting shall be installed in a manner which will not create a driving hazard on abutting streets or which will not cause direct illumination on adjacent properties, and shall comply with all other requirements of this ordinance.
- D. Adequate ingress and egress shall be provided as prescribed in this ordinance.
- E. Before approval is given for any use, a development plan shall be submitted to the police department and the fire department before submittal to the planning commission for review pursuant to this ordinance, as to suitability of

location of entrances and exits to the site, parking area, screening, lighting and other design features.

Sec. 21.66. - Moving of buildings.

- A. Any building or structure which has been wholly or partially erected on any premises located within the city shall not be moved to and be placed upon any other premises in the city until a building permit for such removal has been secured according to the requirements of this ordinance. Any such building or structure shall fully conform to this ordinance in the same manner as a new building or structure.
- B. Before a permit may be issued for moving a building or structure, the planning director shall inspect the same and determine if it is in a safe condition to be moved, whether or not it may be reconditioned to comply with the county's building code and other city requirements for the use and occupancy for which it is to be used, and whether or not it will be of similar character with the buildings in the area where it is to be moved. In addition, clearances shall be obtained from all utility companies ensuring that utilities are discontinued and all facilities accounted for. Special inspection fees may be charged to cover costs of inspecting the old site and the new site of such building or structure. If these conditions can be complied with, a building permit shall be issued for the moving of such building or structure. Such permit shall carry the verification of the planning director.

Sec. 21.68. - Tourist homes; bed and breakfast, inns and homes.

Tourist homes and bed and breakfast, inns, and homes uses to be permitted in all zoning districts of the city as a conditional use; provided that conditional use approval shall have been first granted by the planning commission as set forth in section 2.70 of the zoning ordinance.

In addition to the standards of determination set forth in section 2.70 of the zoning ordinance, the planning commission shall also review the application and require compliance with the following standards prior to approval of the application:

- A. The owner of the structure must be the resident manager of the tourist home or bed and breakfast operation;
- B. The structure must maintain the appearance of a single-family residence;
- C. A single off-street parking area shall be provided for the occupants and employees with at least one parking space for each sleeping room provided for transient guests plus at least two parking spaces for the owner;
- D. The applicant shall submit a floor plan of the entire structure showing the present use or the proposed use of each room in the structure. Any permit granted allowing the conditional use shall designate the number of bedrooms for transient guests and each number shall not thereafter be increased without further application and approval of the planning commission;
- E. The use shall be in harmony with the existing neighborhood in which it is located and will not be detrimental to the future orderly development of nearby properties;
- F. All refuse and garbage collection area and devices shall be screened and located in the area designated by the planning commission;
- G. The planning commission shall limit the number of tourist homes and bed and breakfast operations permitted in any neighborhood area so that no such operation shall be located within 500 feet of an existing tourist home or bed and breakfast operation; [and]
- H. The planning commission shall be entitled to compel installation of such exits and other safety measures as it shall deem advisable, however, the city shall have no obligation or liability in connection therewith.

Any conditional use granted by the planning commission for use of a residence as a tourist home or bed and breakfast, inn or home use shall be subject to future review by the planning commission at any time upon petition for review submitted by the planning director and following public hearing thereon by the planning commission.

The planning commission shall have authority to impose conditions for operations and shall have authority to revoke the conditional use entirely if it finds that the operation violates the original conditions, or any subsequent conditions of operation, or constitutes a nuisance to the neighborhood.

Sec. 21.70. - Ownership of two-family residential structures.

Ownership of any two-family residential structure shall be required to be retained in the same ownership for the entire structure, and the ownership of the structure may not be divided except through condominium ownership in accordance with requirements of the state law regulating condominium ownership. If more than one owner shall own the two-family dwelling, each individual owner shall be responsible for the entire structure and use thereof.

Sec. 21.72. - Site condominium projects.

For the purposes of this ordinance, the term site condominium project shall mean a plan or project consisting of not less than two single-family units established in conformance with the Michigan Condominium Act, P.A. 59 of 1978 (MCL 559.101 et seq.), as amended.

- A. In connection with reviewing a site condominium project, the following terms shall have the following meanings:
1. Building site: A lot, or a two dimensional condominium unit of land (i.e., envelope, footprint) with or without limited common elements designed for construction of a principal structure or a series of principal structures plus accessory buildings. All building sites shall have access to public or private roads.
 2. Common elements: Portions of the condominium project other than the condominium units.
 3. Condominium unit: That portion of the condominium project designed and intended for separate ownership and use, as described in the master deed, regardless of whether it is intended for residential, office, industrial, business, recreational, or any other type of use approved by the Michigan Department of Commerce.
 4. Limited common elements: A portion of the common elements reserved in the master deed for the exclusive use of less than all of the co-owners.
 5. Lot: A measured portion of a parcel or tract of land which is described and fixed in a recorded plat and having frontage on a public street or road either dedicated to the public or designated on a recorded subdivision.
 6. Parcel: A tract or continuous area of acreage of land which is occupied or intended to be occupied by a building, series of buildings, accessory building(s), condominium units, or by any other use or activity permitted thereon and including open spaces and setbacks required under this ordinance, and having its frontage on a public or private street.
 7. Setback: The minimum horizontal distance a building or structure or any portion thereof is required to be located from the boundaries of a lot, parcel, edge of pavement, or building site of land upon which the same is situated.
- B. Prior to the issuance of any zoning permit for any use within a site condominium project, the planning commission shall have approved a preliminary and final development plan meeting the requirements of article XIX.
- C. The height, bulk, density, and area by land use requirements set forth in article XX of the ordinance shall also

apply to condominium units. For purposes of this section, the minimum building site required is equivalent to the minimum lot size of the respective zoning district.

Sec. 21.74. - Adult only businesses.

- A. *Authorization.* In the preparation and enactment of this section, it is recognized that there are some uses relating to sexual material which, because of their very nature, have serious operational characteristics that have a deleterious effect upon residential, office and commercial areas. Because certain forms of expression relating sexual material have particular functional and inherent characteristics with a high potential of being injurious to surrounding properties by depreciating the quality and value of such property, it is the intent of this section to provide a framework of reasonable regulatory standards which can be used for approving or disapproving the establishment this type of special use in a viable, accessible location where the adverse impact of their operations may be minimized.
- B. *Site location principles.* The following principles shall be utilized to evaluate the proposed location of any such use. These principles shall be applied by the planning commission as general guidelines to help assess the impact of such a use upon the district in which it is proposed.
1. No adult only business shall be located within 500 feet, measured from the outer most boundaries of the lot or parcel upon which the proposed adult use will be situated, of a: residential zoning district; church, monastery, temple, or similar place of worship; school; library; public park or playground; noncommercial public assembly facility; public office building; licensed day care facility as defined in Act 116 of the Public Acts of 1973, as amended (MCL 722.111 et seq.); or arcade.
 2. An adult only business shall be located in the regional commercial/industrial (RC/ID) district.
 3. No adult only business shall be permitted within a 1,000-foot radius of an existing adult only business. Measurement of the 1,000-foot radius shall be made from the outer most boundaries of the lot or parcel upon which the proposed adult use will be situated.
- C. *Site development requirements.*
1. The site layout, setbacks, structures, function and overall appearance shall be compatible with adjacent uses and structures.
 2. Windows, displays, signs, and decorative or structural elements of buildings shall not include or convey examples of a sexual nature, and are limited to one sign. All such displays and signs shall be in conformance with the City of Boyne City Sign Ordinance and shall be approved by the planning commission prior to their use. Any alterations in the above media shall and must be reviewed and approved by the planning commission.
 3. All buildings entries, windows and other such openings shall be located, covered or screened in such a manner as to prevent a view into the interior from any public or semipublic area; and wherever else it is requested by the planning commission.
 4. No loud speakers or sound equipment shall be used by an adult only business that projects sound outside of the adult only business so that the sound can be discerned by the public from public or semipublic areas.
 5. An adult only business shall clearly post at the entrance to the business, or that portion of the business utilized for adult only purposes, that minors are excluded.
- D. *Use regulations.*
1. No person shall reside in or permit a person to reside in the premises of an adult only business.
 2. No person shall operate an adult only business unless there is conspicuously placed in a room where such business is carried on, a notice indicating the process for all services performed therein. No person operating or

working at such a place of business shall solicit or accept any fees except those indicated on any such notice.

3. The owners, operators or person in charge of an adult only business shall not allow entrance into such building or any portion of a building used for such use, to any minors, as defined by MCL 722.51 et seq., as amended.
4. No adult only business shall possess or disseminate or permit persons therein to possess or disseminate on the premises any obscene materials as defined by MCL 752.361 et seq., as amended.
5. No person shall operate an adult personal service business without obtaining a current code compliance license. Such licenses shall be issued by the zoning administrator or the zoning administrator's designee following an inspection to determine compliance with the relevant ordinances of the City of Boyer City. Such license shall be subject to all regulations of federal, state, and local governments.
6. No person shall become the lessee or sublessee of any property for the purpose of using said property for an adult entertainment business without the express written permission of the owner of the property for such use.
7. The provisions of this section regarding massage parlors shall not apply to hospitals, sanitariums, nursing homes, medical clinics or the offices of a physician, surgeon, chiropractor, osteopath, psychologist, clinical social worker or family counselor who is licensed to practice his respective profession in the state, or who is permitted to practice temporarily under the auspices of an associate or an establishment duly licensed in the state, or to certified members of the American Massage and Therapy Association and certified members of the International Myomassethics Federation.

Sec. 21.76. - Storage and parking of commercial and recreational vehicles in residential districts.

- A. For motor homes, travel trailers, folding-type trailers, pickup campers, snowmobiles on trailers, boats and similar and related type units, and other recreational vehicles as defined by this ordinance, the regulation of outside storage on all lots zoned and/or used for residential purposes are as follows:
 1. A total of three but not more than one of each of such units may be stored or parked outside on a lot which is zoned and/or used for residential purposes. The ownership of such units shall be in the name of a member of the immediate family of the lot's owner, tenant or lessee;
 2. Such units, when stored outside, shall be located in a rear yard, except as provided in the case of vacant lots, and shall be parked on a paved or gravel surface with a maximum width of 12 feet. Such units shall be placed or parked on a lot with a principal building, structure or use unless it is a lot which is attached to an occupied lot under the same ownership. Such units shall not be closer than ten feet from any structure nor five feet from any lot line, unless otherwise provided by this section;
 3. The combined area covered by the dwelling, accessory buildings, other aboveground structures and swimming pools, and the area covered by the outside storage of such units, may not exceed 40 percent of the total area of the lot. However, not more than one such unit may be stored or parked outside on any lot regardless of the restriction set forth in this subparagraph;
 4. Recreational vehicles or recreational equipment may be stored, parked or placed within any front yard or within a public right-of-way where on-street parking is permitted for a period not exceeding 48 hours for loading and unloading or in the process of normal maintenance and cleaning;
 5. In the case of corner lots, as defined with two front yards, the regulations of this section shall apply to both front yards. The side yard facing the street will be considered a second front yard;
 6. In the case of through lots, parking shall be permitted in the effective rear yard, as determined by the planning director; provided the parked vehicle meets the front and side yard principal building setback requirements of the zoning district;

7. In the case of through lots on a corner (i.e., lots with frontage along three streets), parking shall be allowed only in the yard. The planning director may permit parking in the effective rear yard, as noted in subparagraph (6) above, upon determination that such parking is allowed in the adjacent lot;
 8. Such units shall be locked or secured at all times while stored or parked so as to prevent injury to any person or property;
 9. None of such units or any recreational equipment parked or stored outside shall be connected to electricity, water, gas or sanitary facilities for living, lodging or housekeeping purposes and none of the same shall be used for living, lodging or housekeeping purposes, except for not more than seven days within any 60-day period, or as otherwise authorized under the city's Code of Ordinances; [and]
 10. All recreational equipment and vehicles shall be maintained in good condition, shall be operable and shall have a current license and/or registration.
- B. The parking and/or storage of buses and converted buses in excess of 18 feet in length, and boats in excess of 30 feet in length, is prohibited. A suitable covering shall be placed over all boats whenever stored outside.
 - C. Not more than one recreational unit, motor home, travel trailer, pickup camper, folding-type trailer, boat or similar and related type unit, and other recreational vehicles as defined by this ordinance, may be parked or stored on a vacant residentially zoned lot, except as otherwise authorized this ordinance. When stored on a vacant lot, such unit shall be located only on the rear half of such lot.
 - D. Detachable camper tops shall not be stored in any residential district except in accordance with this section. Further, camper tops that are not installed on a licensed and operable vehicle must be placed on the ground and stabilized.
 - E. A recreational vehicle and/or recreational equipment which is officially designated as handicapped in accordance with state law and which is used as the regular means of transportation by or for a handicapped person may be parked within the required setback area.
 - F. Commercial vehicles of over one ton shall not be parked or stored at any time on property used or zoned residentially. It shall be unlawful for the owner, tenant or lessee of any lot in any residential zoning district to permit the open storage or outdoor parking of semi-tractor (WB-50 or larger) trucks and/or semitrailers, bulldozers, earth carriers, cranes or any other similar equipment or machinery, unless parked thereon while in use for approved construction on such lot.

Sec. 21.78. - Performance standards.

Any use permitted by this ordinance is subject to compliance with the performance standards set forth in this section. No use hereafter established shall exceed the limits set forth in this section, except as provided in this ordinance.

- A. [*Nuisance.*] Noise, dust, soot, dirt, fly ash, products of wind erosion, smoke, and vibration emitted shall comply with the city's nuisance ordinance.
- B. *Odor.* The emission of noxious, odorous matter in such quantities as to be readily detectable at a point along any property line, when diluted in the ratio of one volume of odorous air to four or more volumes of clean air, so as to produce a public nuisance or hazard beyond lot lines, is prohibited.
- C. *Glare, heat and light.* Any operation producing intense glare or heat (such as or similar to arc welding or acetylene torch cutting) which emits harmful rays shall be performed within an enclosure so as to completely obscure and shield such operation from direct view from any point along the lot lines and as not to create a public nuisance or hazard along such lot lines, except during the period of construction of the facilities to be used and occupied. Bare bulbs used in or near a residentially used area shall be not greater than ten watts. Within 500 feet of a residentially zoned area, bare bulbs which are visible in the residential area may not exceed 15 watts.

Exterior lighting shall be so installed that the surface of the source of light shall not be visible from the nearest residential district boundary and it shall be so arranged to reflect light away from any residential use. In no case shall more than one footcandle power of light cross a lot line five feet above the ground. In no case shall more than ten footcandle power of light exist at any given point on site. Illumination levels shall be measured with a footcandle meter or sensitive photometer and expressed in footcandles. Exterior spot lighting or other illumination shall be so installed as to eliminate any nuisance to adjoining business and industrial districts or the creation of a traffic hazard on public highways.

- D. *Fire and safety hazards.* The storage and handling of flammable liquids, liquefied petroleum gases, and explosives, ranging from free or active burning to intense burning, as determined by the fire chief, and highly toxic and highly radioactive materials shall comply with all state rules and regulations; regulations as established by the Fire Prevention Act, Act 207 of the Public Acts of 1941, as amended (MCLA. 29.1 et seq.); the Flammable and Combustible Liquids Code (pursuant to Act 154 of the Public Acts of 1974 (MCL 408.1001 et seq.), as amended); 29 CFR 1910.106; NFIPA prevention codes; and the requirements of the state fire marshal. Further, such materials or products, if stored, utilized, or produced within completely enclosed buildings or structures, shall have incombustible exterior walls and meet the requirements of the county's building code. All such buildings or structures shall be set back at least 40 feet from lot lines and all such buildings or structures shall be protected throughout by an automatic sprinkler system complying with installation standards prescribed by NFIPA prevention codes. Further, all exterior aboveground storage tanks for flammable liquid materials, liquefied petroleum gases, explosives and highly toxic and highly radioactive materials shall be located at least 150 feet from all property lines and shall be completely surrounded by earth embankments, dikes and other types of retaining walls which will contain the total capacity of all tanks so enclosed. Belowground bulk storage tanks of flammable liquids shall be located not closer to the property line than twice the depth to the bottom of the buried tank.
- E. *Open fires.* No person operating a permitted use shall cause to be burned any combustible refuse in an open outdoor fire.
- F. *Sewage wastes.* Industrial sewage wastes shall comply with the City of Boyne City's Sewer Use Ordinance and/or Industrial Pretreatment Ordinances, whichever apply, including all requirements of the department of public health, the department of natural resources, the department of environmental quality, including any National Pollution Discharge Elimination System Permit.
- G. *Gases.* The escape of or emission of any gas which is injurious, destructive or explosive is unlawful and may be summarily caused to be abated. Sulphur dioxide gas, as measured at the property line at ground elevation, shall not exceed an average of three-tenths ppm; hydrogen sulfide shall not exceed one ppm; fluorine shall not exceed one-tenth ppm; nitrous fumes shall not exceed five ppm; and carbon monoxide shall not exceed 15.0 ppm, all as measured as the average intensity during any 24-hour sampling period.
- H. *Radio transmissions; explosives and radioactive materials.* For electronic equipment required in an industrial operation, the equipment shall be shielded so that its operation will not interfere with radio, television or other electronic equipment. All explosives and radioactive materials shall be stored and/or used in a manner which does not endanger abutting properties. Radioactive materials and wastes, and including electromagnetic radiation such as X-ray machine operation, shall not be emitted to exceed quantities established as safe by the U.S. Bureau of Standards, when measured at the property line. All transportation, including by rail, of radioactive materials, hazardous waste and toxic waste shall be within permissible standards set by the federal government. Applicable regulations of the Federal Communications Commission regarding electromagnetic radiation are made a part of this ordinance by reference.

- I. *Drifting and airborne matter.* The drifting or airborne transmission beyond the lot line of dust, particles or debris from an open stockpile is unlawful and shall be summarily caused to be abated.
- J. *Nuisances.* A person or industry shall not discharge from any source whatsoever such quantities of air contaminants or other materials which cause injury, detriment or nuisance to the public; which endanger the comfort, repose, health or safety of the public; or which cause or have a natural tendency to cause injury or damage to business or property.
- K. *Compliance with other governmental regulations.* Any use permitted in any zoning district must also comply with all applicable federal, state, county and city health and pollution laws and regulations with respect to noise, smoke and particulate matter, vibration, noxious and odorous matter, glare and heat, fire and explosive hazards, electromagnetic radiation and drifting and airborne matter.

Sec. 21.80. - Telecommunication towers.

Alternative tower structures and antennas telecommunication towers, alternative tower structures and antennas shall be permitted in any zone as a conditional use; provided the following additional requirements are also met.

In addition to the standards set forth in a particular zone, and section 2.70 conditional uses of this zoning ordinance, telecommunication towers or alternative tower structures shall meet the following standards:

- A. *Application.* The applicant must demonstrate that no existing telecommunication tower, alternative tower structure or alternative technology not requiring the use of telecommunication towers or alternative tower structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the planning commission related to the availability of suitable existing telecommunication towers, other alternative tower structures or alternative technology. Evidence submitted to demonstrate that no existing telecommunication tower, alternative tower structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
 1. No existing telecommunication towers or alternative tower structures are located within the geographic area which meet applicant's engineering requirements;
 2. Existing telecommunication towers or alternative tower structures are not of sufficient height to meet applicant's engineering requirements;
 3. Existing telecommunication towers or alternative tower structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment;
 4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing telecommunication towers or alternative tower structures, or the antenna on the existing telecommunication towers or alternative tower structures would cause interference with the applicant's proposed antenna;
 5. The fees, costs, or contractual provisions required by the owner in order to share an existing telecommunication tower or alternative tower structure or to adapt an existing telecommunication tower or alternative tower structure for sharing are unreasonable;
 6. The applicant demonstrates that there are other limiting factors that render existing telecommunication towers or alternative tower structures unsuitable; [and]
 7. The applicant demonstrates that an alternative technology that does not require the use of telecommunication towers or alternative tower structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable.
- B. *Setbacks.* The following setback requirements shall apply to all telecommunication towers or alternative tower

structures for which a special use permit is required; provided, however, that the planning commission may reduce the standard setback requirements if the totals of this ordinance would be better served thereby:

1. Telecommunication towers or alternative tower structures must be set back a distance equal to at least 75 percent of the height of the tower from any adjoining lot line.
 2. Guys and accessory buildings must satisfy the minimum zoning district setback requirements.
- C. *Security fencing.* Telecommunication towers or alternative tower structures and attendant accessory structures shall be enclosed by security fencing six feet in height and shall also be equipped with an appropriate anti-climbing device.
- D. *Landscaping.* The following requirements shall govern the landscaping surrounding telecommunication towers or alternative tower structures and the attendant accessory structures for which a special use permit is required; provided, however, that the planning commission may waive such requirements if the goals of this ordinance would be better served thereby.
1. Telecommunication towers or alternative tower structures and attendant accessory structures shall be landscaped with a buffer of plant materials that have an immediate effect of screening the view of the telecommunication towers or alternative tower structures and attendant accessory structures from adjacent property. The standard buffer shall consist of a landscaped strip at least six feet wide outside the perimeter of the compound. The buffer shall contain a variety of species of plants, half of which must be coniferous.
 2. In locations where the visual impact of the telecommunication towers or alternative tower structures would be minimal, the landscaping requirement may be reduced or waived.
 3. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as telecommunication towers or alternative tower structures sited on large, wooded lots, natural growth and around the property perimeter may be sufficient buffer.
- E. *County, state or federal requirements.* All telecommunication towers or alternative tower structures must meet or exceed current standards and regulations of Charlevoix County, the FAA, the FCC, the Michigan Aeronautics Commission (MAC) and any other agency of the state or federal government with the authority to regulate telecommunication towers or alternative tower structures and antennas. Applicant will submit written proof all the applicable standards have been complied with. If such standards and regulations are changed, then the owners of the telecommunication towers or alternative tower structures and antennas governed by this ordinance shall bring such telecommunication towers or alternative towers structures and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring telecommunication towers or alternative tower structures and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the telecommunication towers or alternative tower structures or antenna at the owner's expense.
- F. *Aesthetics.* Telecommunication towers or alternative tower structures and antennas shall meet the following requirements:
1. Telecommunication towers or alternative tower structures and antenna shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA and/or the MAC, be painted a color so as to reduce visual obtrusiveness;
 2. At a telecommunication tower or alternative tower structure site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings;

3. If an antenna is installed on a structure other than a telecommunication tower or alternative tower structure, the supporting electrical and mechanical equipment must be of a color that is identical to, or closely compatible with the supporting structure so as to make the Antenna and related equipment as visually unobtrusive as possible. The commission may waive this requirement, if it deems that another suitable option is available; [and]
 4. Telecommunication towers or alternative tower structures and supporting structures shall not utilize a power source which generates noise able to be heard by a person of normal aural acuity and adjoining property lines or public property; however, this section shall not be construed as limiting the use of temporary generators or similar devices used to create power during periods of interruption of the primary power source.
- G. *Lighting.* Towers shall not be artificially lighted, unless required by the FAA, the MAC or other applicable authority. If lighting is required the lighting alternatives and design chosen must cause the least disturbance to the surrounding views. Unless required by federal or state law, all sources of lighting for parking areas or for the external illumination of buildings or grounds or for the illumination of signs, shall be directed away from and shall also be arranged as to not affect driver visibility adversely on adjacent public roads and highways. Lighting of parking areas is required when the number of parking spaces is more than five.
- H. *Compliance with codes.* Antenna and telecommunication towers or alternative tower structures shall be grounded for protection against a direct strike by lightning and shall comply as to electrical connections and wiring and as to structural integrity with all applicable state and local building codes and the applicable standards for telecommunication towers or alternative tower structures published by the Electronic Industries Association, as amended from time to time.
- I. *Interference with residential reception.* Telecommunication towers or alternative tower structure shall be located so that they do not interfere with television and radio reception to neighboring residential areas.
- J. *Signs.* No signs other than signs required pursuant to federal and state law shall be allowed on an antenna or tower, except for safety and security. A sign shall be placed on the fence indicating the telephone number of who to contact in case of an emergency. The name and telephone number must be 50-point print.
- K. *Spacing, towers.* Towers shall be located no closer than one mile from an existing telecommunication tower or alternative tower structure, as measured in a straight line between the base of the existing tower and the proposed base of the proposed tower. Telecommunication towers or alternative tower structures located outside of the municipal boundaries of the City of Boyer City shall also be included in the spacing requirement.
- L. *Spacing, residences.* Telecommunication towers or alternative tower structures shall not be located within 200 feet or 300 percent of the height of the telecommunication tower or alternative tower structure, whichever is greater, of a single-family or multiple-family dwelling unit, church, school, or other structure normally used and actually used for the congregation of persons. Distance for the purpose of this section shall be measured from the base of the telecommunication tower or alternative tower structure to the lot line of the single family or multiple family dwelling unit, church, school, or other structure normally used and actually used for the congregation of persons.
- M. *Removal of abandoned antennas and telecommunication towers or alternative tower structures.* Any antenna, telecommunication tower or alternative tower structure that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of such antenna, telecommunication tower or alternative tower structure shall remove the same within 90 days of notice of abandonment. This notice of abandonment is required to be filed with the city on the date which activity ceases on the antenna. Along with said removal, said owner shall restore the site of said antenna, telecommunication tower or alternative tower structure to its original condition prior to location of the antenna, telecommunication tower or alternative tower structure

subject to reasonable wear and tear. Failure to remove an abandoned antenna, telecommunication tower or alternative tower structure within said 90-day period shall be grounds for the city to undertake removal of the antenna, telecommunication tower or alternative tower structure at the owner's expense. If there are two or more users of a single telecommunication tower or alternative tower structure, then this provision shall not become effective until all users cease using the antenna, telecommunication tower or alternative tower structure. The planning commission may require the applicant to file a bond equal to the reasonable cost of removing the antenna, telecommunication tower or alternative tower structure or other supporting structure(s) as a condition of a special use permit given pursuant to this section.

- N. *Spacing, airport.* No telecommunication tower or alternative tower structure shall be located so as to interfere with aircrafts; ability to safely arrive and depart the Boyne City Airport, according to the future flight paths designated by the FAA and/or the MAC, after any airport expansion, No telecommunication tower or alternative tower structure will be permitted in those paths which changes the minimum descent altitude which exists at the time of adoption of this amendment.
- O. *Future needs.* The applicant must demonstrate that a future needs study has been conducted. The study shall consist of an analysis of whether or not additional telecommunication towers or alternative tower structures will be necessary in the future.

Applicants are required to complete this study with input from other companies providing similar services. The geographic scope of the analysis shall take into account the geographic service area of the proposed structures. If the applicant(s) determines future telecommunication towers or alternative tower structures will be needed, the applicant(s) is encouraged to submit one application package requesting conditional use permits for the future required structures as well.

Sec. 21.82. - Condominium development standards.

- A. *Purpose.* The intent of this section is to provide regulatory standards for condominiums and condominium subdivisions similar to those required for projects developed under other forms of ownership. This section is not intended to prohibit or treat a proposed or existing condominium project different than a project or development under another form of ownership.
- B. *Definitions.* The definitions contained in this ordinance are intended to make comparison possible between the definitions of this ordinance and the city's Code of Ordinances.
- C. *Application and authority.*
1. The following review process shall apply to all condominium projects within the city.
 2. Concurrently with notice required to be given to the city pursuant to section 71 of P.A. 59 of 1978, as amended (MCL 559.171) a person, firm, corporation or other legal entity intending to develop a condominium project shall file with the city clerk the following information with respect to the projects:
 - a. All names, address and telephone numbers of:
 - i. Person, firms, corporations or other legal entity with an ownership interest in the land on which the project will be located together with a statement that the entity is a fee owner or land contract purchaser;
 - ii. All engineers, attorneys, architects, and licensed land surveyors, involved in the condominium project; [and]
 - iii. The developer or proprietor of the project;
 - b. The legal description of the land including tax identification numbers;
 - c. The total acreage;

- d. The intended use;
 - e. The number of units to be developed; [and]
 - f. A copy of the proposed master deed.
3. Condominium projects shall contain all information required by the Michigan Condominium Act.
 4. The information shall be filed with the planning director at the time the information is filed with the city clerk, and shall be kept current.
- D. *Approval of plans.* All condominium plans must be approved by the planning commission following the same process identified for development plan review in this ordinance. In making a determination, the planning commission shall consult with the necessary staff and/or consultants it deems necessary regarding the adequacy of the master deed, deed restrictions, utility systems, streets, project design and layout and compliance with the Michigan Condominium Act.
- E. *Streets and necessary easements.*
1. Condominium projects with streets shall comply with all street requirements found in this ordinance and the City's Code of Ordinances. Projects which connect public streets shall have the project street dedicated to the public.
 2. The condominium plan shall include all necessary easements granted to the city and/or constructing, operating, inspecting, maintaining, repairing, altering, replacing and/or removing pipelines, mains, conduits and other installations of a similar character (hereinafter called public structures) for the purpose providing public utilities, including, but not limited to, conveyance of sewage, water and stormwater runoff across, through and under the property subject to such easement, and excavating and filling ditches and trenches necessary for the location of such structures, pursuant to the adopted standards of the City of Boyer City.
- F. *Setbacks and boundaries.* The setback requirements for condominium buildings shall be determined as follows:
1. *Single-family detached units.*
 - a. The front yard setback shall be one-half the approved or recorded street right-of-way, plus the current setback for the existing zoning district.
 - b. Side yard setbacks shall be the twice the minimum required within the zoning district. The distance from the unit to the limit of development shall meet the minimum required side yard setback within the zoning district.
 - c. The rear yard setback between the rear of two units shall be twice the minimum rear yard setback of the zoning district. The distance from the rear of the unit to the limits of the development shall meet the minimum rear yard setback of the zoning district.
 2. Multiple-family buildings shall meet the standards of the multiple family residential district (MFRD).
 3. The relocation of boundaries as defined in section 148 of the Michigan Condominium Act shall conform to all setback requirements of this section, of the district in which the project is located, shall be submitted to the planning commission for review and approval, and these requirements shall be made a part of the bylaws and recorded as part of the master deed.
- G. *Common elements.* After construction of a condominium unit, the undeveloped area of a unit site shall become a common element.
- H. *Encroachment.* A condominium project shall not be constructed in a manner that intentionally creates an encroachment.
- I. *Subdivision of unit sites.* Subdivision of condominium unit sites is permitted with planning commission approval,

contingent upon the submission of an amended master deed to determine the effect of the subdivision on conditions of zoning or development plan approval, and shall be made as part of the bylaws and recorded as part of the master deed.

- J. *Conformance with subdivision regulations and construction standards.* All condominium project plans shall conform to the plan preparation requirements, design layout, and construction standards as established within this ordinance or within the city's Code of Ordinances or within any adopted construction standards.
- K. *Water and waste water.* The condominium project shall comply with and meet all federal, state, county, and city standards for a fresh water system and waste water disposal.
- L. *Expansion and conversion.* Prior to expansion or conversion of a condominium project to additional land and new phase must be approved by the planning commission.
- M. *Master deed.* The project developer shall furnish the city with one copy of the proposed consolidated master deed, one copy of bylaws and two copies of the completed plans. The proposed plans shall be reviewed for compliance with this ordinance and the city's Code of Ordinances and to ensure that an assessment mechanism has been included to guarantee adequate maintenance of common elements. Master deeds submitted to the city for review shall not permit contraction of the condominium (whereby co-owners can withdraw from the condominium and responsibility for maintenance of common elements) without resubmittal of the master deed to the city for review and approval. Fees for these reviews shall be established, from time to time, by the city commission.
- N. *As-built plan and occupancy.* Submission of an as-built plan of a condominium unit is required prior to occupancy. The planning director may allow occupancy of the project before all improvements required are installed; provided that a bond, letter of credit, or escrow fund is submitted to the city clerk, sufficient in amount and type to provide for the installation of improvements before the expiration of the temporary occupancy permit without expense to the city. The amount and form of the bond, letter of credit, or escrow fund shall be determined by the city manager.
- O. *Final bylaws, consolidated master deed and site plan.* Upon approval of the development the applicant shall furnish the city a copy of the bylaws and consolidated master deed. The development plan shall be provided on a Mylar sheet of at least 24 inches by 36 inches.
- P. *Compliance with other statutes and ordinances.* All condominium projects shall comply with federal, state and local laws, statutes and ordinances.

Sec. 21.84. - Withholding of approval.

The planning commission, board of appeals, or city commission may withhold granting of approval of any use, development plan, planned unit development, conditional use approval, variance, or other approval required by this ordinance pending reviews and/or approvals which may be required by state or federal agencies or departments.

ARTICLE XXII. - DESIGN STANDARDS

Sec. 22.10. - Intent.

The purpose of the following architectural and site design standards is to evaluate proposed buildings and site improvements during development plan review to ensure that certain design and appearance standards are maintained. These standards provide a means of evaluating whether the proposed building design and site layout meet the overall intent of development plan review and this ordinance. These standards shall be used to ensure all proposed buildings and site improvements meet the intent of this ordinance.

These standards also are intended to protect the general health, safety, welfare and harmony of the city by ensuring that the city's appearance, character, history, and natural resources are preserved and respected by: achieving high quality design; reducing the visual and physical dominance of the automobile; providing for pedestrian access and orientation; providing public open spaces; providing landscaping and seasonal color; and adding distinctive architectural features and rooflines to the viewscales of the city.

Sec. 22.20. - Architecture in the MFRD, POD, WMD, GCD, RC/ID, PID and CSD.

- A. *Building form.* Building mass, height, bulk and width-to-height ratio must be similar in scale and in proportion to buildings within 500 feet, for buildings in the multiple-family residential district (MFRD), professional office district (POD), waterfront marina district (WMD), general commercial district (GCD), regional commercial/industrial district (RC/ID), planned industrial district (PID), and community service district (CSD), unless existing buildings do not meet the standards of this article as determined by the planning commission.
1. *Walls and facades.* A single uninterrupted length of a building facade should not exceed 100 feet. Recesses, offsets, angular forms, curved or stepped walls, projecting vestibules from the plane of the wall, or other features should be used to provide a changing and visually interesting shape. Vertical elements such as towers, cupolas, and chimneys are recommended.
 2. *Windows.* The approximate size, orientation and spacing of windows should match that of buildings within 500 feet, unless existing buildings do not meet the standards of this article as determined by the planning commission. Window shapes shall be rectangular, square or palladian (most rectangular with a semicircular top). Windows are permitted with a recommended width-to-height ratio of between one to one and four to one. Vertical windows are permitted with a recommended maximum width-to-height ratio of one to two. Windows should be recessed and include visually obvious sills. Spaces between windows should be formed by columns, mullions, or material found elsewhere on the facade. Clear window glass is recommended; green, blue, bronze, or smoke tints are also permitted.

The first floor of front facades of nonresidential buildings should be at least one-third windows, and remaining floors of front facades should be at least one-quarter windows.
 3. *Rooflines.* Rooflines should be consistent with the surrounding neighborhood character as determined by the planning commission. Pitched roof forms (gable, hip, shed) with overhanging eaves should be used within the MFRD, POD, WMD, GCD, RC/ID, and CSD, with between six inches of vertical rise to 12 inches of horizontal run, and 12 inches of vertical rise to 12 inches of horizontal run. Standing seam metal roofs may also be permitted within the MFRD, POD, WMD, GCD, RC/ID, and CSD. Mansard, mock mansard, or barrel roofs are discouraged. Dormer windows are recommended. Distinctively shaped roof forms, detailed parapets, and exaggerated cornice lines should be incorporated into rooflines along building facades greater than 100 feet. Rooftop mechanical equipment must be screened by the roof form.
 4. *Main entrances.* Main entrances should be emphasized with larger doors and framing devices such as deep overhangs, recesses, peaked roof forms, porches, or arches.
- B. *Building content.* Buildings in the MFRD, POD, WMD, GCD, RC/ID, and CSD should possess architectural variety, but must enhance the overall cohesiveness of the neighborhood's character and appearance as determined by the planning commission.
1. *Architectural features.* Building facades greater than 100 feet should contain architectural features, details and ornaments that are consistent with predominating architectural styles found within the neighborhood such as:

arches; roof cornices; contrasting bases; contrasting masonry courses, water tables, or molding; pilasters or columns; corbeling; contrasting bands or color; stone or ceramic accent tiles; colonnades; or porches. All sides of a building should be similar in design, details, and materials to present a cohesive appearance to neighboring properties.

Elements such as wall clocks, decorative light fixtures, and door or window canopies are also recommended. Canopies should be of metal or canvas; vinyl canopies are not recommended. All nonresidential buildings must have interior downspout and gutter systems; exterior downspouts and gutters are not permitted for nonresidential buildings, except for those originally constructed for single-family residential purposes.

2. *Entrance details.* Main entrances to buildings should incorporate devices such as canopies, overhangs, raised parapets over the door, larger door openings and display windows, accent colors, and architectural details such as tile work, moldings, and distinctive door pulls. Canopies should be of metal or canvas; vinyl canopies are not recommended.
3. *Building materials.* Building materials must be consistent with the surrounding neighborhood character, as determined by the planning commission. Building materials on the front facade or any facade visible from a public right-of-way must be primarily of natural materials conveying permanence, as determined by the planning commission. Each front facade, any facade visible from a public right-of-way, and any facade with a dedicated public entrance into the building should contain at least two-thirds of the recommended materials listed below, excluding window areas.
 - a. *Recommended materials.* Brick masonry; stone; concrete slab (poured-in-place, tilt-up construction).
 - b. *Acceptable materials.* Split face, scored, or ground face block; beveled wood siding (lap, board and batter, shake); exterior finish insulation systems (EIFS).
 - c. *Discouraged materials.* Smooth face block; vinyl siding found inconsistent with the design of the building; metal siding (standing seam panels, aluminum siding); clear and reflective glass; T-111 and other wood panel siding.

Acceptable or discouraged materials, or similar synthetic or highly reflective materials should not be used except for decorative or accent features only. Exterior insulation finish systems (EIFS) may be used for decorative or accent features, and may also be a primary facade material; provided it is placed at a height of 12 feet or greater, measured from grade, and provided it is no more than one-quarter of the total facade area.
4. *Colors.* The following natural colors should be used for the main portions of building facades and roof forms: neutral earth tones (sand to brown); shades of gray; traditional colors (e.g., brick red, forest green, navy blue); light, subdued hues (e.g., salmon); or white. Contrasting, accent colors which are compatible with the primary colors listed above are encouraged for trim, accent, and other decorative architectural features. The use of bright or fluorescent colors (e.g., purple, orange, pink, lime, yellow) is discouraged. Colors should be natural to the material or pigmented, and not painted on the material whenever possible.
- C. *Historic district buildings.* New buildings and building renovations within a MFRD, POD, WMD, GCD, RC/ID, or CSD that are located within a historic district must have architectural features, details and ornaments such as arches, colonnades, cornices or porches that are consistent with predominating architectural styles found within that district. The planning commission may require that development plans for new buildings and building renovations within a historic district be reviewed by any historic district commission established for such districts.

- A. *Building materials.* Building materials for an attached office/main entrance portion of a building within an planned indu district (PID) must be primarily of natural materials conveying permanence, as determined by the planning commission, as: brick masonry; stone; concrete slab (poured-in-place, tilt-up construction); split face, scored, or ground face block; or reflective glass. Exterior insulation finish systems (EIFS) may also be a primary facade material provided it is placed a height of 12 feet or greater. If a building within an [a] PID does not have an attached office/main entrance portion, the standards should apply to the front facade of the building to a height of 12 feet.

The following materials, along with those listed above, may be used for all other facades of a building within an PID: smooth face block; and metal siding (standing seam panels, aluminum siding). The following materials should not be used: beveled wood siding (lap, board and batter, shake); vinyl siding; and T-111 and other wood panel siding.

- B. *Colors.* Buildings within an PID should comply with the standards of section 22.20(B)(4) regarding color.

Sec. 22.40. - Architecture in the RED, TRD and WRD.

- A. *Building form and content.* The following architectural and building material standards are recommended for new dwellings within the rural estate district (RED), traditional residential district (TRD), and waterfront residential district (WRD).
1. *Building materials.* Building materials should be consistent with the surrounding neighborhood character, and primarily be composed of brick masonry; stone, or beveled wood siding (lap, board and batter, shake).
 2. *Windows.* The approximate size, orientation and spacing of windows should be compatible with the surrounding neighborhood character, and shapes should be rectangular, square, or palladian (mostly rectangular with semicircular top). Circular, octagonal, or diamond shaped windows are discouraged other than for decorative gable windows. Horizontal windows are recommended with a width-to-height ratio of between one to one and four to one. Vertical windows are recommended with a maximum width-to-height ratio of one to two. Windows should be recessed and include visually obvious sills.
 3. *Rooflines.* Rooflines should be consistent with the surrounding neighborhood character. Pitched roof forms (gable, hip, shed) with overhanging eaves are recommended with between five inches of vertical rise to 12 inches of horizontal run, and 12 inches of vertical rise to 12 inches of horizontal run.
- B. *Garages.* At least 75 percent of individual garages attached to dwellings within new residential subdivisions or planned unit developments should be side entry or recessed at least ten feet behind the front building line (living area). Side entry garages or recessed garages of at least ten feet behind the front building line (living area) are encouraged for new dwellings within the RED, TRD, and WRD.
- C. *Porches and awnings.* The location, size and types of architectural projections such as porches or awnings should be compatible with buildings within 500 feet, as determined by the planning commission, for new dwellings in the RED and TRD. The use of open, unenclosed front porches of at least ten feet of depth is encouraged for new residential dwellings within the RED, TRD, and WRD.

Sec. 22.50. - Open space, pedestrian circulation and view protection.

- A. Site design should provide a pedestrian circulation system separate from that provided for vehicles and should ensure pedestrian safety.
- B. The location and design of landscaping and pedestrian areas should be compatible with and enhance the pedestrian and open space network in the area. Whenever possible, the location and design of open spaces should form a continuation of open space areas within the immediate vicinity so that open spaces are linked together in a connected system.

- C. The location, size and use of yards should maintain the unobstructed view of lakes, ponds, rivers and streams for adjacent properties and from nearby public rights-of-way and public parks or open spaces. The placement of accessory structure yard areas which block the view of waterways, lakes, wetlands, woodlands, and scenic vistas from adjacent properties or rights-of-way should be avoided.
- D. Sidewalks at least five feet wide and at least seven feet wide where abutting parking should be provided along all public and private streets. Multiple-purpose pathways for pedestrian and bicycle use meeting the design standards of the American Society of Transportation Officials may be required along major arterial roads. Multiple-purpose pathways are intended to connect with existing or planned multiple-purpose pathways and to link residential areas to recreational facilities and commercial and institutional destinations.
- E. All developments should provide pedestrian walkways between public sidewalks and building entrances.
- F. A consistent type of ornamental lighting designed to illuminate pedestrian areas may be provided along all sidewalks.

Sec. 22.60. - Parking and loading.

- A. Parking lots visible from the public right-of-way should be screened from view by a landscaped barrier at least three feet in height.
- B. Loading and unloading from secondary streets may be permitted by the planning commission rather than the required on-site loading, upon demonstration by the applicant that through traffic flow and access to neighboring uses will not be disrupted.
- C. Parking lot lighting should not be greater than 20 feet in height.

Sec. 22.70. - Street and access design.

- A. The street system should be designed to balance the distribution of internal traffic so that no one street or access point is overburdened and relied on as the only path for a large number of vehicles. This objective should be accomplished by providing a collector street system in addition to local streets that is connected at frequent intervals to the arterial road network by the city's traditional grid pattern.
- B. Shared access or connections between adjacent uses as a means to limit conflict points and preserve capacity on adjacent roads may be required.
- C. In designing the street system, the objective should be to limit blocks to a maximum length of 600 feet.

ARTICLE XXIII. - LANDSCAPING STANDARDS

Sec. 23.05. - Intent.

The intent of this article is to establish minimum standards for the design, installation, and maintenance of landscaping along public streets, as buffer areas between uses, on the interior of a site, within parking lots, and adjacent to buildings. Landscaping is viewed as a critical element contributing to the aesthetics, development quality, stability of property values and the overall character in the city. The standards of this article are also intended to provide incentives to preserve quality mature trees, screen headlights to reduce glare, integrate various elements of a site, help ensure compatibility between land uses, assist in directing safe and efficient traffic flow at driveways and within parking lots, and minimize negative impacts of stormwater runoff and salt spray.

The landscape standards of this article are considered the minimum necessary to achieve the intent. In several instances, the standards are intentionally flexible to encourage flexibility and creative design. Applicants are encouraged to provide additional landscaping to improve the function, appearance and value of their property.

Sec. 23.10. - Requirements and timing of landscaping.

- A. *Plan required.* Landscaping shall be included with any development plan or plot plan application reviewed by the city. A separate landscape plan shall be submitted at a minimum scale of one inch equals 40 feet. The landscape plan shall clearly describe the location, type, size, and spacing of all plant materials. It shall also include planting details and specifications clearly describing planting technique, material installation, planting mixtures, mulch, material depth, seed blends, and other necessary information.
- B. *Installation and inspection.* Wherever this ordinance requires landscaping or plant materials, it shall be planted within six months from the date of issuance of a certificate of occupancy and shall thereafter be reasonably maintained with permanent plant materials which may be supplemented with other plantings. The planning commission may require a performance guarantee to cover the cost of landscaping prior to issuing a certificate of occupancy.

Landscaping shall be installed in a sound manner according to generally accepted planting procedures with the quality of plant materials as hereinafter described. Landscaped areas shall be protected from vehicular encroachment by use of curbing. Landscaped areas shall be elevated above the pavement to a minimum height of eight inches to protect plant materials from snow removal operations, salt, and other hazards. If building or paving construction is completed in an off-planting season, a temporary certificate of occupancy may be issued only after the owner provides a performance bond to ensure installation of required landscaping in the next planting season.

An inspection of plant materials will be conducted by the planning director within three months of written notification of installation to release the performance guarantee.

- C. *Plant material standards.* It is the intent of this article that an interesting and thoughtful mixture of plantings shall be provided. Therefore, all required landscaping shall comply with the following minimum plant material standards, unless otherwise specified within this article. These standards may be varied by the planning commission when these established minimums will not serve the purpose and intent of this article.
1. *Plant quality.* Plant materials permitted in required landscaped areas shall be nursery grown, hardy to the climate of northern Michigan, long-lived, resistant to disease and insect attack, and shall have orderly growth characteristics.
 2. *Plant size specifications.*
 - a. *Trees.* Required trees shall be of the following sizes at the time of planting, unless otherwise stated in this article.
 - 1) *Deciduous trees.* Two and a half inch caliper minimum trunk measurement at four feet off the ground, with a minimum eight feet in height above grade when planted.
 - 2) *Evergreen trees.* Eight feet in height, with a minimum spread of three feet and the size of the burlapped root ball shall be at least ten times the caliper of the tree measured six inches above grade.
 - 3) *Deciduous ornamental trees.* One-inch caliper minimum at three feet off the ground, with a minimum height of six feet above grade when planted.
 - b. *Shrubs.* Minimum 24 inches in height above planting grade.
 - c. *Hedges.* Planted in such a manner as to form a continuous unbroken visual screen within two years after

planting.

- d. *Vines*. Minimum of 30 inches in length after one growing season.
 - e. *Ground cover*. Planted in such a manner as to present a finished appearance and reasonably complete coverage after one complete growing season.
 - f. *Grass*. Planted in species normally grown as permanent lawns in Charlevoix County. Grass may be plugged, sprigged, seeded, or sodded, except that rolled sod, erosion reducing net, or suitable mulch shall be used in swales or other areas subject to erosion. Grass, sod, and seed shall be clean and free of weeds, noxious pests, and disease.
 - g. *Mulch material*. Minimum of six inches deep for planted trees, shrubs, and vines, and shall be installed in a manner as to present a finished appearance.
3. *Approved plant species*. Unless otherwise provided herein, or specifically permitted by the planning commission, all required plant materials shall be of the following species:
- a. *Deciduous trees*. Hard Maple, Oak, Beech, Ash, Ginko (maple only), Bradford Pear, Linden, Honeylocusts (thornless only).
 - b. *Evergreen trees*. Fir, Spruce, Pine, Hemlock.
 - c. *Deciduous ornamental trees*. Amur Maple, Dogwood, Redbud, Magnolia, Hicks Yew, Pfitzer Juniper, Ornamental Cherry, Viburnum, Flowering Crabapple.
 - d. *Shrubs*. Honeysuckle, Lilac, Cotoneaster, Forsythia, Euonymus, Hydrangea, Privet, Alpine Currant, Barberry, Flowering Quince, Spreading Yews, Juniper, Burning Bush, Spiraea, Mugo Pine, Bayberry.
 - e. *Ground cover*. Pachysandra, Spreading Juniper, Wintercreeper, Periwinkle, English Ivy.
4. *Prohibited plant materials*. The following plant materials shall not be used for landscaping purposes under any circumstances because of susceptibility to storm damage, disease, or other undesirable characteristics: Box Elder, Silver Maples, American Elm, Horse Chestnut, Poplar, Aspen, Ailanthus, Catalpa, European Barberry.

Sec. 23.15. - Special provisions for existing sites.

Special provision is made for applying these standards to developed sites which existed prior to the city adopting landscaping requirements. Therefore, when an existing site is undergoing improvement, a change in use, or expansion, the objective of these standards is to gradually bring the existing site into compliance with the minimum standards of this article in relation to the extent of expansion or change on a site.

When reviewing plans for a change in use or expansion which requires development plan review, the planning director or body reviewing the plan shall require an upgrade in landscaping, using the following as guidelines:

- A. Each building expansion of one percent of gross floor area should include at least two percent of the landscaping required for new developments, or a minimum of 30 percent of the landscaping required for new developments, whichever is greater; [and]
- B. Landscaping along the street and as a buffer between adjacent land uses should take priority over parking lot and site landscaping. Where parking lot landscaping cannot be provided, additional landscaping along the street or in the buffer areas should be considered.

Sec. 23.20. - Required landscaping along public streets.

One of the following street landscaping options is required on land abutting city street rights-of-way or where otherwise referenced:

A. *Greenbelt*. A greenbelt meeting the following standards:

1. Minimum width of ten feet. The planning commission may permit the width of the greenbelt to be reduced in cases where existing conditions do not permit a ten-foot width and in the central business district (CBD), or transitional commercial district (TCD), where it is desirable to maintain a shallow front setback in keeping with the character of the CBD. In such cases, the greenbelt requirement may be met through the provision of street trees at the curb, or the provision of landscaping as required below;
2. At least one deciduous tree (minimum 2½ inch caliper) and four minimum 24-inch high shrubs per each 40 lineal feet of street frontage. Location of the trees and shrubbery is discretionary (refer to [section 23.45](#), general layout and design standards). In the CBD, additional canopy trees may be provided in lieu of the requirement for shrubs at the rate of one additional canopy tree for every four required shrubs;
3. The greenbelt area shall contain grass, vegetation ground cover, four-inch shredded bark mulch, or six-inch-deep crushed stone on a weed barrier, excluding marble chips or lava rock, and curbed or edged as necessary. Steel, aluminum, or black plastic edging shall be used for any planting beds; [and]
4. Where headlights from parked vehicles will shine into the roadway, the planning commission may require use of a totally obscuring hedge with a minimum height of 24 inches and a maximum height of 36 inches.

B. *Berms*. A combination of a raised earth berm and plantings meeting the following standards:

1. Minimum height of two feet with a crest at least three feet in width. The height of the berm may meander if the intent of this article is met and an appropriate screen is provided;
2. The exterior face of the berm shall be constructed as an earthen slope, with a slope not to exceed one foot of vertical rise to three feet of horizontal distance (1:3). The interior face of the berm may be constructed as an earthen slope or retained by means of a wall, terrace, or other means acceptable to the planning director;
3. At least one deciduous tree (minimum 2½ inch caliper) shall be provided for each 30 feet of lineal street berm length;
4. At least one minimum 24-inch high shrub shall be provided for each 100 square feet of berm surface area (calculated from a plan view);
5. Berm slopes shall be protected from erosion by sodding or seeding. If slopes are seeded, they shall be protected until the seed germinates and a permanent lawn is established by a straw mulch, hydro-mulching or netting specifically designed to control erosion; [and]
6. The base of any signs placed within the berm shall be at, or below, the average grade along the berm.

C. *Buffer strip*. A buffer strip may be required, particularly where the adjacent uses and those across the street are residential in character or less intense than the use of the subject site. The intent of the buffer strip is to have a minimum five-foot high obscuring area along side or rear lot lines, and an appropriate landscaped strip along front lot lines. A buffer strip shall meet the following requirements:

1. Minimum width of ten feet;
2. All trees shall be evergreens a minimum eight feet high at planting;
3. The buffer planting area shall contain grass, vegetation ground cover, four-inch shredded bark mulch, or six-inch deep crushed stone on a weed barrier, excluding marble chips or lava rock, and curbed or edged as necessary. Steel, aluminum, or black plastic edging shall be used for any planting beds; [and]

4. The following species and planting spacings are recommended:

Common Name	Scientific Name	(Feet on Center)
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"Burki" Red Cedar	Juniperus Virginiana "Burki"	4
Mugo Pine	Pinus Mugo	5
Dark Green Arborvitae	Thuja Nigra	3
Canadian Hemlock	Tsuga Canadensis	12
Serbian Spruce	Picea Omorica	10
Irish Juniper	Juniperus Communis	3
White Fir	Abies Concolor	10
White Pine	Pinus Strobus	10
Ketleeri Juniper	Juniperus Chinensis "Ketleeri"	5

Sec. 23.25. - Interior landscaping.

For every new development, except in the rural estate district (RED), traditional residential district (TRD), waterfront residential district (WRD), manufactured housing park district (MHPD), central business district (CBD), there shall be interior landscaping areas exclusive of any other required landscaping consisting of at least ten percent of the total lot area. This landscaped area should be grouped near building entrances, along building foundations, along pedestrian walkways, and along service areas. All interior landscaping shall conform to the following:

- A. One deciduous (minimum 2½ inch caliper) or ornamental tree (minimum two-inch caliper) or evergreen tree (minimum five-foot height) shall be provided for every 400 square feet of required interior landscaping area;
- B. One 24-inch high shrub shall be provided for every 250 square feet of required interior landscaping area; [and]
- C. The interior landscaping area shall contain grass, vegetation ground cover, six-inch shredded bark mulch, or six-inch deep crushed stone on a weed barrier, excluding marble chips or lava rock, and curbed or edged as necessary. Steel, aluminum, or black plastic edging shall be used for any planting beds.

Sec. 23.30. - Parking lot landscaping.

Within every parking area containing ten or more proposed spaces, at least one deciduous tree (2½ inch minimum caliper) and ornamental tree (minimum two-inch caliper if tree form, six-foot minimum height if clump form) with at least 100 square feet of planting area shall be used for every ten parking spaces, in addition to any other landscaping requirements. This landscaping shall meet the following standards:

- A. Landscaping shall be dispersed throughout the parking lot in order to break up large expanses of pavement and help direct smooth traffic flow within the lot;
- B. Landscaping shall be planned and installed such that, when mature, it does not obscure traffic signs or lighting, obstruct access to fire hydrants nor interfere with adequate motorist sight distance; [and]
- C. All landscaped areas, when adjacent to streets, driveway aisles, or parking areas, shall be curbed. Dimensions of separate landscaped areas within the interior of or adjacent to parking areas shall be shown on the development plan. Minimum width of such areas shall be ten feet; minimum radii shall be ten feet at ends facing main aisles and a minimum one foot for radii not adjacent to main circulation aisles. The length of these areas shall be two feet shorter than adjacent parking space to improve maneuvering. A parking space overhang of two feet may be used to widen a landscaped area and reduce the length of a parking space by two feet less than required by this ordinance.

Sec. 23.35. - Waste receptacle and mechanical equipment screening.

Waste receptacles shall be located and screened in accordance with the standards of this or other city ordinances. Ground mounted mechanical equipment shall be screened with plant materials or a wall, when deemed necessary by the planning commission.

Sec. 23.40. - Plant materials and minimum spacing.

All plant material shall be hardy to the area, free of disease and insects, and conform to the American Standard for Nursery Stock of the American Association of Nurserymen. The overall landscape plan shall not contain more than 33 percent of any one plant species. The use of trees native to the area and northern Michigan, and mixture of trees from the same species association, is encouraged.

A. Trees and shrubs for parking areas (or comparable species).

London Plane Tree
Snowdrift Crabapple
Sweetgum
Marshal Seedless Green Ash
Linden Tree
Spiraea
Junipers (Spreading)
Dwarf Callery Pear
Hawthorns
Honey Locust (thornless)

B. Trees and shrubs for greenbelt and interior landscape areas (or comparable species).

Hawthorns
London Plane Tree
Scarlet Oak
White Ash (seedless)

Pin Oak
European Linden
Honey Locust (thornless)
Little Leaf Linden
Zelkova
Junipers
Border Privet
Gingko
Mugo Pine
Serbian Spruce
Mockorange
Euonymus
Cotoneaster
Snowdrift Crabapple
Hedge Maple
Bayberry
European Hornbeam
Viburnum
Dense Yew
Hicks Yew
Sugar Maple
Red Maple

Dwarf Callery Pear (Bradford)

C. Salt resistant trees and shrubs (or comparable species).

Pinus Nigra

Sweetgum

Black Locust

Juniper (sp.)

Honey Locust (thornless)

Bayberry

D. Trees and shrubs for shady areas (or comparable species).

Euonymus

Honey Locust (thornless)

Arborvitae (sp.)

Mahonia Aquifolium

Alpine Currant

Dogwood

Amelanchier

Mountain Laurel

Viburnum

Cotoneasters

E. Trees not permitted (except where they are considered appropriate for the ecosystem, such as in a wetland environment in proximity to any existing or proposed buildings or structures).

Box Elder
Soft Maples (Silver)
Elms
Poplars
Willows
Horse Chestnut(nut bearing)
Tree of Heaven
Catalpa
Buckthorn
European Alder

F. Plant material spacing: Plant materials used together in informal groupings shall meet the following on-center spacing requirements:

Plant Material Types	Evergreen	Narrow Evergreen Trees	Large Deciduous Trees	Small Deciduous Trees	Large Shrubs	Small Shrubs
Evergreen Trees	Min. 10' Max. 20'	Min. 12'	Min. 20'	Min. 12'	Min. 6'	Min. 5'
Narrow Evergreen Trees	Min. 12'	Min. 5' Max. 10'	Min. 15'	Min. 10'	Min. 5'	Min. 4'
Large Deciduous Trees	Min. 20'	Min. 15'	Min. 20' Max. 30'	Min. 15'	Min. 5'	Min. 3'
Small Deciduous Trees	Min. 12'	Min. 10'	Min. 15'	Min. 8' Max. 15'	Min. 6'	Min. 3'

Large Shrubs	Min. 6'	Min. 5'	Min. 5'	Min. 6'	Min. 4'	Min. 5'
					Max. 6'	
Small Shrubs	Min. 5'	Min. 4'	Min. 3'	Min. 3'	Min. 5'	Min. 3'
						Max. 4'

Sec. 23.45. - General layout and design standards.

- A. Landscaped areas and plant materials required by this ordinance shall be kept free from refuse and debris. Plant materials, including lawn, shall be maintained in a healthy growing condition, neat and orderly in appearance. If any plant material required by this ordinance dies or becomes diseased, they shall be replaced within 30 days of written notice from the planning director or within an extended time period as specified in said notice.
- B. Tree stakes, guy wires and tree wrap are to be removed after one year.
- C. All landscaped areas shall be provided with a readily available and acceptable water supply, or with at least one outlet located within 100 feet of all planted material to be maintained. Frontage landscaping, boulevard medians, interior parking lot landscaped areas, and other curbed landscaped areas shall be irrigated via an underground sprinkler system.
- D. Landscaping materials and arrangement shall ensure adequate sight visibility for motorists, adequate clearance for pedestrians and vehicles, and accessibility to fire hydrants, and shall not interfere with or obstruct the view of public viewsheds and sight lines from rights-of-way and public property to streams, lakes, and other waterways.
- E. Cul-de-sacs, site entrances and boulevard medians shall be landscaped with species tolerant of roadside conditions in northern Michigan.
- F. Landscaping within the site shall be approved in consideration of sight distance, size of planting area, location of sidewalks, maintenance of adequate overhead clearance, accessibility to fire hydrants, visibility to approved signs of adjacent uses, compatibility with the visual character of the surrounding area, maintenance-performance guarantee, and curbing around landscape areas.
- G. Plantings within 15 feet of a fire hydrant shall be no taller than six inches at maturity.

Sec. 23.50. - Incentives to preserve existing trees.

The city encourages the preservation of quality and mature trees by providing credits toward the required trees for greenbelts, buffer strips, interior landscaping, and within parking lots. Trees intended to be preserved shall be indicated with a special symbol on the development plan and be protected during construction through use of a fence around the drip line. Tree species, location, and caliper must be shown on the landscape plan. Tree protection measures must be shown and noted on the landscape plan. To obtain credit, the preserved trees shall be of a high quality and at least 2½ inches caliper. Trees to be preserved shall be counted for credit only if they are located on the developed portion of the site as determined by the planning commission. Trees over 12 inches in caliper to be removed shall be noted on the landscape plan.

The credit for preserved trees shall be as follows. Any preserved trees receiving credit which are lost within two years after construction shall be replaced by the landowner with trees otherwise required.

Caliper of Preserved Tree (in inches)	Numbers of Trees Credited
Over 12	3
8 to 12	2

2½ to 8	1
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Note: Caliper measurement for existing trees is the diameter at a height of 4.5 feet above the natural grade.
 (Diameter at Breast Height, D.B.H.)

The following trees are not eligible for preservation credits:

Box Elder
Apple
Willows
Hawthorn
Poplars
Malus (sp.)
Hackberry
Silver Maple
Locust (sp.)
Autumn Olive
Scotch Pine
Buckthorn
Red Pine
European Alder
Norway Maple
Siberian Elm

Sec. 23.55. - Walls and buffer strips between land uses.

In those instances where the following conditions occur, the need for the wall or berm or similar type of landscaped buffer strip shall be determined by the planning commission.

- A. For those use districts and uses listed below, there shall be provided and maintained on those sides abutting or adjacent to a residential district an obscuring wall as required below (except as otherwise required).

Use	Requirements
1. Off-street parking area	Six-foot high wall
2. POD, WMD, or GCD	
3. RC/ID and ID (open storage areas, loading or unloading areas, service areas)	Six to eight-foot high wall plus buffer strip
4. Automobile washes, drive-in or drive-through restaurants	Six-foot high wall
5. Hospitals (ambulance and delivery areas)	Six-foot high wall
6. Utility buildings, stations and/or substations	Six-foot high wall

- B. Required walls shall be located on the lot line except where underground utilities interfere or where there is a desire to install landscaping in order to break up the wall. In instances where this ordinance requires conformance with front yard setback lines in abutting residential districts where there is an established wall height and material acceptable to the city, the wall shall be continued on the subject site.

- C. Such walls and screening barrier shall have no openings for vehicular traffic or other purposes, except as otherwise provided in this ordinance and except such openings as may be approved by the planning director. All walls herein required shall be constructed of materials approved by the planning director to be durable, weather resistant, rustproof and easily maintained; and, wood or wood products shall be specifically excluded. Materials shall be compatible with surrounding building materials, including but not limited to brick or stone.

Masonry walls may be constructed with openings which do not in any square section (height and width) exceed 20 percent of the surface. Where walls are so pierced, the openings shall be so spaced as to maintain the obscuring character required, and shall not reduce the minimum height requirement. The arrangement of the openings shall be reviewed and approved by the planning director.

- D. The city may approve a three to four-foot high heavily landscaped berm (as determined by the planning commission) as an alternative to a wall upon finding the landscaped berm will provide a similar screening effect.

Sec. 23.60. - Waiver or modification of standards for special situations.

The planning commission may determine existing landscaping or screening intended to be preserved, or a different landscape design, would provide all or part of the required landscaping and screening. In making such a determination to waive or reduce the landscape and screening requirements of this article, the following may be considered:

- A. [The] extent that existing natural vegetation provides desired screening;
- B. There is a steep change in topography which would limit the benefits of required landscaping;
- C. The presence of existing wetlands;
- D. Existing and proposed building placement;
- E. The abutting or adjacent land is developed or planned by the city for a use other than residential;
- F. Building heights and views;

- G. The adjacent residential district is over 200 feet away from the subject site; [and]
- H. Similar conditions to the above exist such that no good purpose would be served by providing the landscaping or screening required.

ARTICLE XXIV. - PARKING, LOADING, AND ACCESS MANAGEMENT REQUIREMENTS

Sec. 24.10. - General regulations and definitions.

- A. [*Purpose.*] The purpose of this section is to regulate the parking, loading, and access of automotive vehicles in all zones. The number of automobiles presently used in the City of Boyne City, by both residents and tourists, and the probability of increase in the number thereof make it necessary for the safety, health and convenience of the people of Boyne City that the public streets be usable, and to their maximum capacity, for the movement of vehicles; and that the parking of vehicles thereon for long periods of time subordinates the good of the public as a whole to the convenience of the few.
- B. [*Applicability.*] The following regulations and definitions shall apply in all zoning districts:
 1. *Plan required.* A plan of the proposed parking and loading areas shall be submitted with any development plan.
 2. *Area requirements.* A minimum of 300 square feet of lot area shall be provided for a parking space for each vehicle, including access aisle, except that the standard shall be 325 square feet where parking is perpendicular (90 degrees) to the access aisle, and except that 200 square feet of lot area which has direct means of ingress and egress from an alley or street may also be deemed a parking space.
 3. *Variance and deferment.* The planning commission may, without proof of unnecessary hardship, waive the requirements of this article if the planning commission finds from the evidence presented that the intended use of a proposed building does not require parking or loading facilities to the degree specified herein. However, the planning commission shall require that adequate open areas be retained around such a building to permit development of the required parking or loading areas should the use of the building change at a later date. The site plan shall note the area where parking is being deferred, including dimensions and a dotted parking lot layout.

Sec. 24.20. - Off-street parking requirement.

With the exception of areas designated on the official zoning map as being parking exempt, there shall be provided in all districts at the time of erection or enlargement of any main building or structure, automobile off-street parking space with adequate access to all spaces. The number of off-street parking spaces, in conjunction with all land or building uses, shall be provided, prior to occupancy, as hereinafter prescribed. Uses located in areas designated as parking exempt may be asked to pay into the parking improvement fund the fee required by the city schedule of fees as adopted by the city commission in lieu of providing off-street parking.

- A. *Location of spaces.* Off-street parking for other than single-family or two-family residential uses shall be either on the same lot or within 300 feet of the building it is intended to serve, measured from the nearest point of the building to the nearest point of the off-street parking lot. Ownership shall be shown of all lots or parcels intended for use as parking by the applicant during development plan review. Permission to use such spaces shall also be secured.
- B. *Location of spaces for residential uses.* Required residential off-street parking spaces shall consist of parking strip, parking bay, driveway, garage, or combination thereof and shall be located on the premises they are

intended to serve.

- C. *Irrevocable use of spaces.* All required off-street parking spaces shall be stated in an application for development plan review and shall be reserved irrevocably for such use, unless otherwise provided in this ordinance. Minimum required off-street parking spaces shall not be displaced by any other use unless and/or until equal parking facilities are provided elsewhere, or the parking requirements of the site change.
- D. *Reduction of space area.* Off-street parking existing at the effective date of this ordinance, in connection with the operation of an existing building or use shall not be reduced to an amount less than hereinafter required for a similar new building or new use.
- E. *Collective use of spaces.* Two or more buildings or uses may collectively provide the required off-street parking in which case the required number of parking spaces shall not be less than the sum of the requirements for the several individual uses computed separately.
- F. *Variance for collective uses.* In the instance of dual function of off-street parking spaces where operating hours of buildings do not overlap and there is an opportunity for a patron to visit more than one use, the planning commission may grant a reduction to the required number of spaces of up to 20 percent provided a signed agreement is provided by the property owners.
- G. *Prohibited activities.* The storage of merchandise, refuse storage and receptacles, or other materials, and the storage or repair of vehicles or other machinery is prohibited in areas serving as parking spaces.
- H. *Similar use.* For those uses not specifically mentioned, the requirements for off-street parking facilities shall be in accord with a use which the planning commission considers is similar in type.
- I. *Fractional units.* When units or measurements determining the number of required parking spaces result in the requirement of a fractional space, any fraction up to and including one half shall be disregarded and fractions over one half shall require one parking space.
- J. *Municipal and community parking areas.* The provisions of this section may be met by participation in a municipal or community parking program designed to serve a larger area, provided plans for such community parking have been approved by the planning commission.
- K. *Screening.* Off-street parking areas and related service drives shall be effectively screened on any side which adjoins or faces premises situated in any residential zone district or institutional premises by an opaque screening of evergreen hedge, natural landscaping opaque in nature, or a solid, uniformly constructed fence, not less than four or more than six feet in height, maintained in good condition, neat and orderly in appearance. Recommended plant materials can be found in article XXIII of this ordinance.
- L. *Setbacks.* No part of any off-street parking area shall be closer than ten feet to any school, hospital, or other institutional property line.
- M. *Loading spaces.* Loading spaces shall not be construed as applying off-street parking space.
- N. *Seating allocation.* In sports arenas, churches, temples or other places of worship, or other places of assembly in which patrons or spectators occupy benches, pews or similar seating facilities, each 24 inches of such seating facilities shall be counted as one seat for the purpose of determining requirements for off-street parking facilities under this ordinance.
- O. *Use of spaces by churches, temples, and similar places of worship.* Parking spaces already provided to meet off-street parking requirements for theaters, stadiums, auditoriums and other places of public assembly, stores, office buildings and industrial establishments lying within 500 feet of a church, temple, or similar place of worship, measured along lines of public access, which theaters, stadiums, etc. are not normally used between

6:00 a.m. and 6:00 p.m. on respective days of worship and are made available for other parking, may be used to meet not more than 75 percent of the off-street parking requirements of a church, temple, or similar place of worship. There shall be a written agreement between all parties concerned where this arrangement is permitted.

- P. *General conditions.* Except when land is used as storage space in connection with the business of an automotive service center/station or automotive repair center, the time limits for parking in off-street parking areas shall prevail as specified under this ordinance. It is the purpose and intention of this subsection that the requirement of maintaining vehicle storage or parking space is to provide for the public safety in keeping parked cars off the streets, but such requirement is not designed or intended to provide, and no person shall permit, the storage or parking on open land of unregistered or unlicensed cars, wrecked or junked cars, or the creation of a junkyard or a nuisance in such area.
- Q. *Restriction of parking on private property.* No person shall park any motor vehicle on any private property, or use such private property as parking space, without the express or implied consent, authorization or ratification of the owner, holder, occupant, lessee, agent or trustee of such property. A complaint for a violation of this subsection shall be made by the owner, holder, occupant, lessee, agent or trustee of such property.
- R. *Exceeding number of spaces required.* In order to minimize excessive areas of pavement which depreciate aesthetic standards and contribute to high rates of stormwater runoff, exceeding the minimum parking space requirements by greater than 20 percent shall not be allowed, except as approved by the planning commission. In granting such additional space, the planning commission shall determine that such parking will be required, based on documented evidence, to accommodate the use on a typical day.
- S. *Units of measurement.*
1. Where floor area is the unit for determining the required number of off-street parking and loading spaces, such unit shall mean the gross floor area (GFA), unless otherwise noted.
 2. Where the floor area measurement is specified as gross leaseable floor area (GLA), parking requirements shall apply to all internal building areas excluding the floor area used for incidental service, storage, mechanical equipment rooms, heating/cooling systems, lavatories, and similar uses, and other areas not intended for use by the general public. Where these areas are not yet defined, leaseable floor area shall be considered to be 85 percent of the gross floor area.
 3. Where the number of spaces required is based on the number of employees, calculations shall be based upon the maximum number of employees likely to be on the premises during the peak shift.
- T. *Use of parking areas.*
1. No repairs or service to vehicles and no display of vehicles for purposes of sale shall be carried on or permitted upon such premises.
 2. No advertising signs shall be erected on the premises.
 3. No person shall leave, park or store, or permit to be left, parked or stored, any motor vehicle longer than 48 hours. It is the purpose and intent of this paragraph that the requirement is to provide for keeping parked motor vehicles off the streets, but such requirement is not designed to permit the storage of unregistered or unlicensed, wrecked or junked cars or vehicles.
 4. Such parking facility may not be used for the storage or parking of unregistered or unlicensed, junked or wrecked vehicles of any type, as a storage area for industrial equipment or material, or as a dump for refuse of any description.

Sec. 24.30. - Minimum number of spaces required.

The minimum number of off-street parking spaces by type of use shall be determined in accordance with the following schedule:

Use	Minimum Spaces Required
A. Residential	
Housing for the elderly	One for each two units, and one for each employee. Should units revert to general occupancy, then two spaces per unit shall be provided
Mobile homes	Two for each mobile home site
Residential, one-family and two-family	Two for each dwelling unit
Residential, multiple-family	1½ per each efficiency or one-bedroom [d]welling unit, and two per each unit with two or more bedrooms
B. Institutional	
Churches, temples, or similar places of worship	One for each three seats or six feet of pews in the main unit of worship based upon maximum seating capacity
Elementary and junior high school	One for each one teacher, employee, or administrator, in addition to the requirements of auditorium
Government offices	One space for every 1,000 square feet of gross floor area
Hospitals	One for each one bed, and one for each employee on duty based upon maximum employment shift
Homes for the aged and convalescent homes	One for each two three beds or two rooms, whichever is less, and one for each employee on duty based upon maximum employment shift
Libraries, museums and noncommercial art galleries	One for every 200 square feet of gross floor area, less the area devoted to book and art storage, utility rooms and lavatories
Private clubs, union halls, fraternal orders, civic clubs, or lodge halls	One for each three persons allowed within the maximum occupancy load as established by city, county, or state fire, building, or health codes
Public recreation centers	Five for every 1,000 square feet of gross floor area
Senior high school	One for each one teacher, employee, administrator, and one for each five students, in addition to the requirements of theaters and auditoriums
C. Business and Commercial	
Automobile wash (automatic)	One for each one employee, plus a minimum of 16 for cars waiting to be washed for each conveyor system, plus one upon exiting each conveyor system, plus two for post-wash detailing
Automobile wash (self-service or coin-operated)	Three for each washing stall in addition to the stall itself, plus one upon exiting each stall
Automotive service stations	Two for each lubrication stall, rack, pit, or service bay; and one for each employee
Beauty parlor or barbershop	Three spaces for each of the first two beauty or barber chairs, and 1½ spaces for each additional chair
Beauty schools	One for every 40 square feet of gross floor area, less the area devoted to storage, utility rooms or lavatories

Carryout restaurants	One for each 150 square feet of gross floor area, with a minimum of six
Convenience store, with or without automotive fuel service	Four spaces for every 1,000 square feet of gross floor area, plus spaces required for automotive fuel service. The planning commission may permit each fuel pump space to count as one-half of a required parking space
Drive-in and drive-through restaurants	One for each 30 square feet of usable floor area, with a minimum of 25 parking spaces, plus eight stacking spaces for each drive-in or drive-through transaction station
Dry cleaners	Two for every 1,000 square feet of gross leaseable floor area
Establishment for sale and consumption on the premises of beverages, food or refreshments, except as otherwise specified herein	One for each 100 square feet of gross floor space or one for each two persons allowed within the maximum occupancy load as established by city, county, or state fire, building or health codes
Equipment repair	One for every 1,000 square feet of gross leaseable floor area
Fast-food restaurants without drive-in or drive-through service	One for each 100 square feet of gross floor area, with a minimum of 25
Furniture and appliance, household equipment, repair shops, showroom of a plumber, decorator, electrician, or similar trade, shoe repair and other similar uses	One for each 800 square feet of gross floor area. For that floor area used in processing, one additional space shall be provided for each two persons employed therein.
Hypermarket	Five for every 1,000 square feet of gross leaseable floor area
Laundromats and coin operated dry cleaners	One for each four washing and/or dry-cleaning machines
Mortuary establishments and funeral homes	One for each 50 square feet of gross floor space in the slumber rooms, parlors or individual funeral service rooms
Motel, hotel or other commercial lodging establishments	One for each one occupancy unit plus one for each one employee, plus spaces for any dining rooms, restaurants, cocktail lounges, ballrooms or meeting rooms, based upon maximum occupancy code
Motor vehicle sales and service establishments	One for each 200 square feet of gross floor space of sales room and one for each one service stall in the service room
Nursery school, day nurseries, or child daycare centers	Two for each employee plus one space for each eight children of licensed authorized capacity
Open air business establishments, except as listed in paragraph (C)(16) hereof	One for every 500 square feet of lot area for retail sales and retail uses
Recreational vehicle sales and service establishments, trailer sales and rentals, boat showrooms	One for every 400 square feet of gross floor area of the sales room
Retail stores, except as otherwise specified herein	One for every 250 square feet of gross floor area
Service establishments, except as otherwise specified herein	Two for every 1,000 square feet of gross leaseable floor area
Shopping center	Four for each 1,000 square feet of gross floor area, plus spaces for a supermarket or hypermarket, if included
Studios, dances, health, music and other similar places of instruction and recreation	One for every 40 square feet of gross floor area, less the area devoted to storage, utility rooms and lavatories

Supermarket	One for each 200 square feet of gross floor area
Video rental establishments	15 for every 1,000 square feet of gross floor area, with a minimum of eight
D. Offices	
Banks and other financial institutions without drive-through lanes	One for each 200 square feet of gross floor space, plus two for every automated teller machine
Banks and other financial institutions with drive-through lanes	Five for every 1,000 square feet of gross floor area, plus two for every automated teller machine and waiting space equivalent to four for each drive-through window
Business offices or professional offices except as otherwise specified herein	One for each 350 square feet of gross floor space
Immediate care medical facility	Two for each examination room, plus one space for each laboratory or recovery room, plus one space for each employee on duty based upon maximum employment shift
Professional offices of doctors, dentists, or similar professions	Seven for every 1,000 square feet of gross floor area
Veterinary clinics or hospitals	Four for every 1,000 square feet of gross floor area
E. Recreation and Entertainment	
Banquet centers and halls	One for every three persons allowed within the maximum occupancy load as established by city, county or state, fire, building or health codes
Batting cages	One for every cage, plus one for each employee
Bowling alleys	Four for each one bowling lane plus accessory uses
Dancehalls, pool or billiard parlors, roller skating rinks, exhibition halls, and assembly halls without fixed seats	One for each two persons allowed within the maximum occupancy load as established by local, county, or state fire, building or health codes
Driving ranges	One for every four tees, plus one for each employee
Golf courses open to the general public, except miniature or "par-3" courses	Four for each one golf hole and one for each one employee, plus spaces required for each accessory use, such as a restaurant or bar
Health, fitness, and exercise centers	Five for every 1,000 feet of gross leaseable floor area, plus spaces required for any pools, tennis courts, etc.
Marinas, public or private	1½ for each boat or ship
Miniature or "par-3" golf courses	Two for each one hole plus one for each one employee
Private golf clubs, swimming pool clubs, tennis clubs, or other similar uses	One for each two member families or individuals plus spaces required for each accessory use, such as a restaurant or bar
Place of outdoor assembly	One for each three seats or six feet of benches
Stadium sports arenas or similar places of assembly	One for every three seats or six feet of bench
Swimming pools	One for every four persons of maximum occupancy
Tennis or racquet clubs	Four for each court, plus one for each employee. If a spectator area is provided, one space for every three seats shall be required
Theaters and auditoriums	One for each four seats, plus one for each two employees
F. Industrial	

Industrial or research establishments, and related accessory offices	Five plus one for every 1½ employees in the largest working shift. Space on site shall also be provided for all construction workers during periods of plant construction
Warehouses and wholesale establishments and related accessory offices	Five plus one for every one employee in the largest working shift, or one for every 1,700 square feet of gross floor space, whichever is greater

Sec. 24.40. - Barrier-free parking requirements.

Within each parking lot, signed and marked barrier-free spaces measuring 12 feet in width shall be provided at a convenient location, in accordance with the following table. Barrier-free parking space requirements shall be in accordance with the Michigan Department of Labor, Construction Code Commission, Barrier-Free Design Division.

Total Spaces	Barrier-Free Spaces Required
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	8
301 to 400	12
Over 400	12, plus 2 for every 250 or fraction thereof over 400

Sec. 24.50. - Waiting areas for drive-through facilities.

- A. As used in this section, "off-street waiting space" or "stacking spaces" means an area ten feet wide by 24 feet long that does not include the use of any public space, street, alley, sidewalk or right-of-way. Such area shall be located entirely within a non-residential zoning district.
- B. On the same premises with every building or structure, or part thereof, erected and occupied for the purpose of serving customers in their automobiles by means of a service window or similar arrangement where the automobile engine is not turned off, there shall be provided, unless otherwise specified within this ordinance, off-street waiting spaces or stacking spaces in accordance with the following table:

Automotive repair or service station	=	One per service bay
Automotive fueling station	=	Two per fuel pump island
Convenience store drive-through	=	Two per service window
Drive-through financial institution	=	Four per service window
Drive-through food service	=	Ten per service window

Dry cleaning drop-off station	=	Two per service window
Automatic carwash	=	16 per wash line, plus one upon exit
Self-service carwash	=	Two per wash bay, plus one upon exit

Sec. 24.60. - Off-street parking, space layout, standards, construction and maintenance.

A. Plans for the layout of off-street parking facilities shall be in accord with the following minimum requirements:

Parking Pattern	Maneuvering Lane Width	Parking Space Width	Parking Space Length	Total Width of One Tier of Spaces Plus Maneuvering Lane	Total Width of Two Tiers of Spaces Plus Maneuvering Lane
0° (parallel parking)	12 ft.	8 ft.	23 ft.	20 ft.	28 ft.
30° to 53°	12 ft.	8 ft.	20 ft.	32 ft.	52 ft.
54° to 74°	15 ft.	9 ft.	20 ft.	35 ft.	55 ft.
75° to 90°	20 ft.	9 ft.	20 ft.	42 ft.	62 ft.

- B. All spaces shall be provided adequate access by means of maneuvering lanes according to the terms of this section. Backing directly onto a street, backing into an access drive, or requiring the use of the street for maneuvering between parking rows shall be prohibited.
- C. Adequate ingress and egress to the parking lot by means of clearly limited and defined drive shall be provided for all vehicles. Entrance to such area shall be only from a public street, an adjoining principal use, or an adjoining alley.
- D. Ingress and egress to a parking lot lying in an area zoned for other than single family residential use shall not be across land zoned for single family residential use.
- E. All maneuvering lane widths shall permit one-way traffic movement, except that the 90-degree pattern may permit two-way movement.
- F. Each entrance and exit to and from any off-street parking lot located in an area zoned for other than single-family residential use shall be at least 25 feet distant from adjacent property located in any single-family residential district.
- G. The entire parking area, including parking spaces and maneuvering lanes, required under this ordinance shall be provided with a dust-free surfacing of concrete and/or plant-mixed bituminous material according to the requirements of this ordinance and the City's Code of Ordinances. Necessary curbs or other protection for the public and for the protection of adjoining properties, streets and sidewalks shall be provided and maintained. Where deemed necessary, the planning commission may require that parking areas be curbed with concrete curbs and gutters six inches in height. The parking area shall be surfaced within six months of the date of occupancy.

In all cases where such parking areas abut public sidewalks, a curb at least six inches high shall be placed thereon so that a motor vehicle cannot be driven or parked with any part thereof extending within two feet of a public sidewalk.

- H. Off-street parking areas shall be drained so as to dispose of all surface water accumulated in the parking area in such a way as to preclude drainage of water onto adjacent property or toward buildings.
- I. All lighting used to illuminate any off-street parking area shall be so designed, located, installed and shielded as to be confined within and directed onto the parking area only, and to prevent glare onto adjacent properties, and shall be arranged to prevent adverse affects on motorist visibility on adjacent rights-of-way. Reflectors shall be installed to reflect the light away from adjacent residential areas and shall be installed in such manner as to allow the reduction of the amount of light after normal parking hours each day.

The source of illumination shall not be more than 15 feet above the parking surface in any central business district (CBD), or community service district (CSD), and 20 feet above the parking surface in any professional office district (POD), waterfront marina district (WMD), general commercial district (GCD), regional commercial/industrial district (RC/ID), or planned industrial district (PID).

All illumination for such parking facilities shall not exceed one footcandle at any lot or property line, nor ten footcandles at any point on the site.

Sec. 24.70. - Loading space requirements.

- A. For every building, or addition to an existing building, hereafter erected to be occupied by a use allowed in any commercial or industrial zone district or other similar use requiring the receipt or distribution of materials or merchandise, there shall be provided and maintained on the same premises with such building additional off-street loading spaces in relation to floor area as follows:

Gross floor area (in square feet)	Minimum Loading and Unloading Space Required
10,000—20,000	One space
20,001—50,000	Two spaces
50,001—100,000	Three spaces
100,001 +	One additional space for each additional 100,000 square feet or fraction thereof

- B. Each such loading space shall be at least ten feet in width, 50 feet in length, and 14 feet in height. No such space shall be located closer than 50 feet to any lot in any residential district unless wholly within a completely enclosed building or enclosed on all sides by a wall, or a greenbelt, berm, or buffer strip.
- C. Lights used to illuminate loading areas shall be arranged so as to reflect away from adjacent properties.
- D. Loading spaces shall not be provided in the front yard, the front side of any building, or on any building side facing and directly visible to a public street, unless the planning commission determines such a location is necessary due to the building's location or placement, the existing street patterns, or other factors.
- E. Loading spaces shall be covered with a pavement of concrete or plant-mixed bituminous material and shall be graded and drained to a storm sewer so as to dispose of surface water in accordance and conformity with the requirements of the city.
- F. The planning commission may waive the requirement for off-street loading spaces for existing buildings within a central business district (CBD) under the following circumstances:

1. The rear of the building is built to the rear lot line and directly abuts a public alley; [and]
2. The layout and size of the existing building and parking area preclude the placement of a designated loading space within the site.

Sec. 24.80. - Parking in residential districts.

Off-street parking for permitted principal uses in residential districts shall conform to the following regulations:

- A. For any development in the residential districts, the parking surface on the property and access driveways shall be covered with pavement or hard surface material (plant-mixed bituminous material, concrete, and brick or masonry pavers). The portion of the driveway within the right-of-way shall meet the then-current city specifications;
- B. When lighting facilities are used, reflectors shall be installed to reflect the light away from adjacent residence areas, and the source of illumination shall not be more than 13 feet above the parking surface; [and]
- C. All open parking areas in a multiple-family residential district (MFRD) shall be screened from adjacent properties by means of a brick wall, screen fencing, evergreens and/or other barriers deemed suitable by the planning commission to minimize noise from motor vehicles and to prevent the direct glare of headlights from falling on adjacent properties.

(Ord. of 9-14-2004, § 2)

Sec. 24.90. - Access management requirements.

- A. *Statement of purpose.* The purpose of this section is to provide access standards which will facilitate through-traffic operations, ensure public safety along roadways, and protect the public investment in the street system, while providing property owners with reasonable, though not always direct, access. The standards are specifically designed for streets whose primary function is the movement of through traffic, as opposed to local streets whose primary function is access to adjacent properties.
- B. *Application of standards.*
 1. The standards of this section shall be applied to the following major traffic routes (arterials) identified in the City of Boyer City Comprehensive Plan: Lake Street, Lakeshore; Division; Front; West Michigan; Boyer City/Charlevoix; Pleasant; Park; M-75, Boyer City/East Jordan, Boyer Avenue/State Street.
 2. The access standards contained herein shall be required in addition to, and where permissible shall supersede, the requirements of the Michigan Department of Transportation and/or Charlevoix County.
 3. The standards contained in this section shall apply to all uses, except permitted single-family and two-family dwelling units.
 4. For expansion and/or redevelopment of existing sites where the planning commission determines that compliance with all the standards of this section is unreasonable, the standards shall be applied to the maximum extent possible. In such situations, suitable alternatives which substantially achieve the purpose of this section may be accepted by the planning commission, provided that the applicant demonstrates all of the following apply:
 - a. The size of the parcel is insufficient to meet the dimensional standards;
 - b. The spacing of existing, adjacent driveways or environmental constraints prohibit adherence to the access standards at a reasonable cost;
 - c. The use will generate less than 500 total vehicle trips per day or less than 75 total vehicle trips in the peak

hour of travel on the adjacent street, based on rates developed by the institute of transportation engineers (ITE); [and]

d. There is no other reasonable means of access.

C. *Number of driveways.*

1. Access to a parcel shall consist of either a single two-way driveway or a pair of one-way driveways wherein one driveway is designed and appropriately signed to accommodate ingress movements and the other egress movements.
2. Where parcel frontage is insufficient to provide a driveway meeting the minimum driveway width and radii, a shared driveway or other means of access may be required.
3. Where the parcel is situated on a corner lot, one access point on each street frontage may be permitted, provided there is a minimum of 100 feet of frontage per side. No more than one access point shall be permitted per side for parcels located on corner lots unless otherwise provided for within this ordinance.
4. Where the property has continuous frontage of over 300 feet and the applicant can demonstrate, using the Institute of Transportation Engineer's Trip Generation Manual or another accepted reference, that a second access is warranted, the planning commission may allow an additional access point. Where possible, this access should be spaced accordingly to the standards contained herein, located on a side street, shared with an adjacent property, and/or be designed to restrict one or both left turn movements.
5. Where the property has continuous frontage of over 600 feet, a maximum of three driveways may be allowed, with at least one such driveway being designed, constructed, and signed for right-turns-in and right-turns-out only.

D. *Shared access, joint driveways, parking lot connections and rear service drives.*

1. Shared use of access between two or more property owners should be encouraged through use of driveways constructed along property lines, connecting parking lots, and rear service drives, particularly for the following:
 - a) Sites within one-quarter mile of major intersections;
 - b) Sites having dual frontage;
 - c) Sites where frontage dimensions are less than 300 feet;
 - d) Locations with sight distance problems; and/or
 - e) Along roadway segments experiencing congestion or accidents.

In such cases, shared access of some type may be the only access design allowed.

2. In cases where a site is adjacent to a parking lot of a compatible use, or a rear service drive, a connection to the adjacent facility may be required by the planning commission.
3. In cases where a site is adjacent to undeveloped property, the site must be designed and constructed to accommodate a future parking lot connection, rear service drive, or other means of shared access as determined by the planning commission.
4. The applicant shall provide Boyne City with letters of agreement or access easements from all affected property owners.

E. *Adequate sight distance.*

1. Requirements for minimum intersection or corner sight distance for driveways shall be in accordance with the American Association of State Highway and Transportation Officials (AASHTO) guidelines defined in chapter 9 of "A Policy on Geometric Design of Highways and Streets, 1984," or its latest edition.

2. The planning commission may adjust driveway location where there is a concern regarding adequate sight distance

F. *Driveway spacing from intersections.*

1. Driveway spacing from intersections shall be measured from the centerline of the driveway to the extended edge of the intersecting street's right-of-way line.
2. In order to preserve intersection operations and safety, the minimum distance between a driveway and an intersecting street right-of-way shall be based on the following:
 - a. For locations in the vicinity of intersections experiencing congestion (peak hour operations below level of service "C" for one or more movements) and/or a significant number of traffic accidents (five or more annually), the planning commission may require that access be constructed along the property line furthest from the intersection; [and]
 - b. For locations within 200 feet of any signalized or four-way stop intersection, driveways shall be spaced a minimum of 100 feet from the intersection. Where this spacing cannot be provided, driveways designed for "right-turn in/right-turn out only" movements may be allowed, with a minimum spacing of 50 feet from the intersecting street right-of-way.

G. *Driveway spacing from other driveways.*

1. Driveway spacing from other driveways shall be measured from the centerline of each driveway at the point where it crosses the street right-of-way line.
2. Minimum driveway spacing from other driveways along the same side of the street shall be determined based on posted speed limits along the parcel for each particular frontage, as follows:

Posted Speed Limit (mph)	Minimum Driveway Spacing
25 mph	50 feet
30 mph	50 feet
35 mph	75 feet
40 mph	75 feet
45 mph	100 feet
50 mph	125 feet
55 mph	150 feet

3. Driveways shall be directly aligned with those across the street or, where offset, the minimum driveway spacing from driveways across the street shall be 100 feet, excluding when one or both driveways are designed and signed for right-turn-in/right-turn-out only.

H. *Driveway design, channelized driveways, deceleration lanes and tapers, bypass lanes.*

1. Driveways shall be designed to the standards of Charlevoix County, except where stricter standards are included herein or by the city's driveway construction standards.
2. Driveway width and radii, for non-residential and multiple family developments.
 - a. The typical driveway design shall include one ingress and one egress lane, with a combined minimum throat width of 25 feet and a maximum throat width of 35 feet, measured from face to face of curb.
 - b. Wherever the planning commission determines that traffic volumes or conditions may cause significant delays for traffic exiting left, two exit lanes may be required.
 - c. For one-way paired driveway systems, each driveway shall be 20 feet wide, measured perpendicularly.
 - d. In areas with pedestrian traffic, the exit and enter lanes may be separated by a median with a maximum

width of ten feet. Concrete sidewalks shall be continued and/or maintained across driveways.

- e. Driveways shall be designed with a 25-foot radii; 30-foot radii shall be required where daily truck traffic is expected.
- 3. Directional driveways, divided driveways and deceleration tapers. Directional driveways, divided driveways, and deceleration tapers and/or by-pass lanes may be required by the planning commission where they will reduce congestion and accident potential for vehicles accessing the proposed use or site. Right-turn tapers shall be a minimum of 75 feet in length and at least 11 feet wide.

Sec. 24.95. - Private road standards.

- A. The city discourages the use of private roads, but may allow private roads as a special land use when meeting the standards of this section. The regulations for private roads contained herein shall not apply to approved private roads within platted subdivisions regulated by this ordinance or the city's Code of Ordinances, or internal access drives to parking within approved site plans for multiple-family developments.
- B. The use of private roads must be supported by documentation accepted by the planning commission that the property possesses unusual configuration and/or topography which would render construction of streets under city standards for grades, radii, width and/or materials impractical.
- C. An easement shall be provided of not less than 50 feet in width for roads and utilities. This easement shall be recorded with the register of deeds office and a copy of the recorded easement provided to the city clerk.
- D. Any lot accessed via a private road shall have frontage on the private road which is at least equal to the minimum lot frontage required herein for the zoning district in which the lot is located. The frontage for the lot shall be measured at the point of the beginning of the lot line designated by the city as the side lot line.
- E. Any lot created on a private road, along with accompanying buildings, shall comply with all site development standards applicable to the zoning district in which it is located.
- F. The maximum length of any private road cul-de-sac shall not exceed the city standard for public roads.
- G. The surface and base material of any private road shall be approved by the city as being sufficient to accommodate emergency vehicles.
- H. Issuance of a zoning permit for the placement of buildings/structures on lots and/or parcels on a private road shall not be considered a guarantee or warranty that adequate access exists to the lot for emergency vehicles. The city assumes no responsibility for the maintenance of or improvements to private roads.
- I. The applicant shall submit a joint maintenance agreement or master deed in recordable form that runs with the land, binds benefiting parcels, and allows the city to make any repairs or conduct any maintenance it deems necessary, and charge the property owners or homeowners association served by the private road for such service.
- J. The applicant shall provide a recorded statement running with the land informing purchasers that the access road is private.

ARTICLE XXV. - CONDITIONAL USE REQUIREMENTS

Sec. 25.10. - Standards and requirements per conditional use.

Use	Standards and Requirements
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Adult foster care group homes	<p>1. The site shall be evaluated for the degree of potential residential and commercial use conflicts.</p> <p>2. No foster care group home shall be located closer than 1,500 feet to any other foster care group home or foster care family home, measured from the nearest wall of each such structure.</p> <p>3. No additional facility shall be approved which would contribute to an excessive concentration of foster care group homes within a neighborhood.</p>
Automobile and other vehicle wash establishments	<p>1. A minimum front yard setback of 20 feet shall be required for all structures.</p> <p>2. Required off-street parking and vehicle waiting areas shall be provided in accordance with article XXIV.</p>
Automotive fueling and service stations, and automotive repair centers	See <u>section 21.46</u> for detailed regulations.
Bed and breakfast inns, boardinghouses, roominghouses, and lodginghouses	See <u>section 21.68</u> for detailed regulations.
Breweries, distilleries, canning factories, chemical plants	1. The site shall be evaluated for consideration of potential odor and pollution nuisances.
Cemeteries	<p>1. Sites shall have a minimum lot area of 10 acres.</p> <p>2. All structures must be a minimum 50 feet from any lot line.</p> <p>3. The site must abut a principal or regional thoroughfare, with all ingress and egress directly to such thoroughfare.</p>

Churches, temples, and similar places of worship	<ol style="list-style-type: none"> 1. Sites shall have a minimum lot area of 1 acre. 2. The minimum lot width shall be 100 feet, and the minimum side and rear yards shall be 25 feet. 3. A solid masonry wall, ornamental on both sides and 4 feet in height, or a greenbelt, berm, or buffer strip, shall be provided along the sides of the parking area adjacent to a residential district. 4. The site must abut a principal or regional thoroughfare, with all ingress and egress directly to such thoroughfare. 5. No off-street parking is allowed in any required front yard.
Cocktail lounges and nightclubs	<ol style="list-style-type: none"> 1. Uses are not permitted within 500 feet of any church or school.
Commercial greenhouses, nurseries and garden centers exceeding 1,000 square feet	<ol style="list-style-type: none"> 1. Sites shall have a minimum lot area of 1 acre. 2. All structures must be a minimum of 40 feet from all lot lines. 3. The storage of materials and display areas shall meet all the yard setback requirements applicable to any building in the district. 4. All loading activities and parking areas shall be provided on the same premises off-street. 5. The storage of any soil, fertilizer, or similar loosely packaged materials shall be sufficiently contained to prevent any adverse effect upon adjacent properties.

<p>Commercial outdoor recreation establishments (excluding golf-related uses)</p>	<ol style="list-style-type: none">1. Sites must abut a principal or regional thoroughfare, with all ingress and egress directly to such thoroughfare.2. No building or spectator seating facility shall be located within 50 feet of a property line.3. The site shall be periodically cleared of debris so that litter does not accumulate on adjacent properties.4. Provisions shall be taken to insure that excessive dust, noise, traffic, lighting glare, and trespassing are not inflicted on adjacent properties.
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<p>Convalescent or nursing homes, housing for the elderly</p>	<p>5. The site shall be evaluated for the degree of potential residential and commercial use conflicts.</p> <p>6. The allowable density of the underlying zoning district may be increased by no more than 50% for all nursing care units licensed by the State of Michigan, or 25% for non-licensed nursing care and supportive care units.</p> <p>7. All dwelling units shall have a minimum of 450 square feet per unit.</p> <p>8. Retail and service uses may be permitted on the site if such uses are accessory to the elderly housing use. All such uses shall be within the principal residential building. No exterior signs of any type are permitted for these accessory uses.</p> <p>9. All medical waste facilities shall be secured and meet the requirements of the Public Health Department of the State of Michigan.</p> <p>10. Paved walkways shall be provided from the main building entrance(s) to any sidewalks along the adjacent public street.</p>
<p>Drive-in or drive-through establishments</p>	<p>See <u>section 21.64</u> for detailed regulations.</p>
<p>Essential public service buildings and structures, public utility buildings, telephone exchange buildings, electric transformer stations and substations, gas regulator stations</p>	<p><u>11.</u> Screening requirements are subject to planning commission approval based on analysis of potential effect upon surrounding properties.</p> <p><u>12.</u> No storage yards are permitted in residential districts.</p> <p><u>13.</u> Applications must provide evidence of the necessity for the proposed location.</p> <p>14. Electric or gas regulator equipment and apparatus shall be set back a minimum of 30 feet from all lot lines.</p>

Funeral homes	<p>15. Sites shall have a minimum lot area 1 acre and minimum lot width of 100 feet.</p> <p>16. An off-street vehicle assembly area shall be provided to be used in support of funeral processions and activities. This area shall be in addition to the required off-street parking and its related maneuvering area.</p>
Golf courses ("par-3" courses)	<p>17. Minimum lot size shall be 40 acres.</p> <p>18. The principal and accessory buildings, including maintenance sheds, shall be set back at least 50 feet from all property and street lines.</p> <p>19. Accessory buildings, structures and storage areas shall be screened on all sides from adjacent residential areas and public street rights-of-way.</p> <p>20. Operational hours for maintenance vehicles, course maintenance and/or irrigation may be restricted to protect nearby residential districts.</p>
Home occupations	<p>See the definition of "home occupations" in <u>section 1.40</u>. See also <u>section 21.50</u> for automotive repair uses.</p>

Hospitals	<p>21—24. Sites shall have a minimum lot area of 2 acres.</p> <p>25. Front, side and rear yard minimum setbacks shall be 50 feet.</p> <p>26. Parking setbacks shall be 40 feet in the front yard, and 20 feet for side and rear yards.</p> <p>27. All structures shall be a minimum of 100 feet from any lot lines of adjacent residentially zoned districts.</p> <p>28. Ambulance and delivery areas to be obscured from all residential property view with a solid, ornamental masonry wall at least 6 feet in height, or a greenbelt, berm, or buffer strip.</p> <p>29. Sites must abut a principal regional thoroughfare, with all ingress and egress directly to such thoroughfare.</p> <p>30. Auxiliary uses, such as a pharmacy, gift shop, cafeteria and similar customary hospital related uses shall be allowed.</p> <p>31. Parking for professional and outpatient buildings, or sections of a hospital building, shall be calculated as separated uses. Only ½ the total number of parking spaces within gated or restricted physician parking lots shall be included in parking calculations.</p>
Junkyards and scrap yards	<p>32. Sites shall have a minimum lot area of 10 acres.</p> <p>33. A 50-foot wide greenbelt as defined in article XXIII shall adjoin all property lines.</p> <p>34. A solid, ornamental masonry wall 6 feet in height shall be required at interior boundaries of greenbelt.</p> <p>35. Junk and scrap materials may not be stacked higher than the height of the</p>

screening wall.

36. Vehicles or vehicle bodies shall be stored in rows with a minimum of 20-foot continuous loop drives separating each right-of-way of vehicles.

37. Vehicle parts shall not be stored, loaded, unloaded, or dismantled outside the wall enclosing the salvage yard.

38. No vehicle, vehicle bodies, or other materials shall be stored in a manner as to be visible from any residence, business, or street from a height at the top of the wall enclosing the yard.

39. All batteries shall be removed from any vehicle, and all radiator and fuel tanks shall be drained prior to the vehicle being placed in the storage yard. Salvaged batteries, oil and other such substances shall be removed by a licensed disposal company or be stored in a manner which prevents leakage of battery fluid. No fluids removed from vehicles shall be applied as a dust control method.

40. The front obscuring wall shall be set back the same distance as a building in the planned industrial district, and all such walls shall be set back a minimum of 500 feet from any residential use or district.

41. In order to protect surrounding areas, the crushing of vehicles or any part thereof shall be limited to daylight hours, provided that such activities shall not be conducted on Sundays or federally recognized holidays.

42. The planning commission may impose other conditions which have a

	<p>reasonable relationship to the health, safety and general welfare of the city. These conditions can include a provision for an annual inspection by the city to ensure continuing compliance with the above standards.</p>
Kennels, Commercial	<p>43. Sites shall have a minimum lot area of 2 acres.</p> <p>44. All outdoor runs or breeding areas to be enclosed on all sides by a solid, ornamental masonry wall, not less than 6 feet in height, and located at least 25 feet from any property line.</p> <p>45. Building wherein dogs are kept, dog runs, and/or exercise areas shall not be located nearer than 100 feet to an adjacent occupied dwelling or any adjacent building used by the public, and shall not be located in any required front, rear or side yard setback area.</p> <p>46. Such facilities shall be subject to other conditions and requirements necessary to ensure against the occurrence of any possible nuisance such as fencing, soundproofing, or sanitary requirements.</p>
Mechanical amusement device arcades, pinball parlors, or pool halls	<p>1. Sites are not permitted within 500 feet of any church or school.</p>
Mining, excavating or other removal of sand, earth, minerals, etc.	<p>47. All structures and machinery shall be a minimum of 100 feet from all property lines and 200 feet from any residential districts.</p> <p>48. Submission of a screening plan is required, except for topsoil removal.</p> <p>49. The applicant shall submit a written statement describing: an indication of the proposed use of the property following the extraction; an approved</p>

reclamation plan; documentation that demonstrates to the satisfaction of the city that activities will not produce any serious consequences which will adversely affect the natural topography, drainage patterns, water bodies, floodplains, street conditions, nearby property values or use of adjacent land.

50. Creation of a lake or pond shall only be permitted where the applicant can demonstrate using engineering and hydrological studies that the water can be maintained in a nonpolluted condition, and that the applicant meets any requirements of the State of Michigan.

51. Truck routing shall be restricted to those streets designed to accommodate truck traffic on a year-round basis.

52. A reclamation plan shall be provided indicating final grades which are level with surrounding grades and not in excess of 5% percent unless demonstrably necessary for the proposed reclamation land use. No topsoil shall be removed from the site; topsoil shall be redistributed properly upon completion of the extractive activities, or phase thereof.

53. The site shall be enclosed with a 6-foot security fence with a locking access gate. Such fences shall be placed no closer than 50 feet to the top or bottom of any slope.

54. No slope shall exceed an angle with the horizontal of 45 degrees.

55. No building or structure

	<p>shall be erected on the site, except as may be permitted in that zoning district or if approved as a temporary structure for machinery or field office.</p> <p>56. Proper measures shall be utilized to minimize the nuisance of noise and dust or airborne materials, as determined by the planning commission, and may include requirements on stockpiling size and/or covering of stockpiles.</p>
Nursery schools, day nurseries, and child care centers	<p>57. An outdoor play area shall be required of 100 square feet per child cared for, with a total minimum area of 1,500 square feet.</p> <p>2. An on-site drive shall be provided for drop off/pick ups. This drive shall be arranged to allow maneuvers without affecting traffic flow on the public street.</p>

<p>Open air business uses (see definition in <u>section 1.40</u>)</p>	<p><u>58.</u> Sites shall have a minimum lot area of 10,000 square feet and a minimum lot width of 100 feet.</p> <p>59. Sites shall meet any required screening standards required by this zoning ordinance.</p> <p>60. No exterior lighting shall cause a driving hazard on abutting street, nor be exposed to any adjacent residentially zoned property.</p> <p>61. A 5-foot fence or wall shall be constructed along the rear and sides of the lot, capable of keeping trash, paper, and other debris from blowing off the premises, except as provided otherwise in this zoning ordinance.</p> <p><u>62.</u> The lot area used for parking shall be hard-surfaced and the display or storage areas shall be provided with a permanent, durable, and dustless surface, and shall be graded and drained so as to dispose of all surface water.</p>
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Open storage yards of buildings and construction contractors, landscaping contractors, and lumberyards

63. Sites shall be visually screened from all adjoining residential and commercial properties by solid, ornamental masonry wall at least 80 feet in length and 6 feet in height, or a greenbelt, berm, or buffer strip.

64. Any storage or display area shall comply with the minimum setback requirements for the district in which the facility is located and no storage or outside display shall be permitted within any front yard.

65. Any outside storage area shall be paved or surfaced with hard surface material and shall include a stormwater drainage system.

66. Heavy construction equipment such as bulldozers and front-loaders shall not be stored or used on the site. The size of such equipment shall be limited to a one-yard bucket.

67. The storage of soil, fertilizer and similar loosely packaged materials shall be contained and covered to prevent it from blowing into adjacent properties.

68. All stored materials including loosely packaged materials shall not be piled or stacked higher than the height of the obscuring screen within an area of 20 feet from the obscuring screen. Any obscuring screen shall not exceed 6 feet in height.

<p>Outdoor theaters</p>	<p>1. All sites shall have a minimum lot area of 10 acres and all structures shall be a minimum of 100 feet from all lot lines.</p> <p>2. Screens may not face a principal or regional thoroughfare.</p> <p>3. Entire sites shall be fenced.</p> <p>4. Sites must abut a principal or regional thoroughfare, with all ingress and egress directly to such thoroughfare.</p> <p>5. No viewing areas shall be located closer than 40 feet to any lot line.</p>
<p>Private parks, country clubs, golf courses and golf driving ranges</p>	<p>69. Sites shall have a minimum lot area of 5 acres.</p> <p>70. All structures shall be a minimum of 100 feet from adjacent residentially zoned districts.</p> <p>71. Sites must abut a principal or regional thoroughfare, with all ingress and egress directly to such thoroughfare.</p> <p>72. Whenever any such use abuts a residential district, a transition strip at least 100 feet in width shall be provided between all operations, buildings and structures, including fences, and the residential property. Grass, plant materials, and structural screens of a type in accordance with article XXIII shall be placed within the transition strip.</p> <p>73. A minimum yard of 100 feet shall separate all buildings, uses, operations, and structures permitted herein, including fences, from any public street or highway used for access or exit purposes. This yard shall be landscaped in accordance with article XXIII.</p>

Radio and television towers	<p>74. Sites shall have a minimum lot area of 10,000 square feet.</p> <p>75. Towers shall be located at a distance from each lot line equivalent to or greater than the height of the tower.</p>
Recreation vehicle storage yards	<p>76. Sites shall have a minimum lot area of 1 acre.</p> <p>77. Storage areas to be enclosed by a chainlink fence 5 feet in height. Additional height may be permitted for barbwire cradling.</p>
Regional shopping centers	<p>78. Sites must abut a principal or regional thoroughfare, with all ingress and egress directly to such thoroughfare.</p> <p>79. The design shall ensure that vehicular circulation patterns are appropriately designed and regulated to eliminate potential conflicts between traffic generated by the center, and traffic on adjacent streets and thoroughfares.</p> <p>80. Internal circulation shall be designed such that no intersection includes more than 4 aisles or drives.</p> <p>81. Site entrances shall be restricted to three-way movements, with unrestricted inbound movements.</p> <p>82. Internal drives defined by the ends of aisles shall have raised curbed islands at appropriate locations to define circulation paths and control movements through the parking lot.</p> <p>83. Loading facilities which serve the commercial establishment in the principal building shall be screened from public view.</p> <p>84. Any outlots shall have circulation and parking designed to complement the remainder of the site.</p>

Self-storage warehouses	<p>85. The minimum lot area shall be 3 acres.</p> <p>86. The minimum building and parking setback shall be 50 feet from any public street right-of-way line, 50 feet setback from any residential district and 25 feet from any nonresidential zoning district.</p> <p>87. The front yard and any side yards adjacent to residential districts shall include screening and landscaping in accordance with the requirements of this zoning ordinance.</p> <p>88. All storage shall be completely within enclosed buildings or structures.</p> <p>89. A structure for a resident manager may be allowed on the site.</p> <p>90. The use shall be limited to storage only.</p>
Schools, primary and secondary public schools, commercial schools and colleges	<p>91. All play areas adjacent to a residential district must be fenced.</p> <p>92. Bus and automobile dropoff and pickup drives shall be separate from, and not conflict with, through travel lanes of any street.</p>
Temporary buildings for use incidental to construction work	<p>1. Such uses are allowed for period not to exceed 1 year.</p>

Veterinary clinics and hospitals	<p>93. Outdoor exercising is allowed when the pet is accompanied by an employee provided no animals shall be permitted outside of the buildings between 8:00 p.m. and 7:00 a.m.</p> <p>94. All boarding shall be limited to that incidental to treatment or surgery unless the use has also been approved as a kennel.</p> <p>95. Outdoor enclosures or runs visible to adjacent residential districts shall be screened with solid, ornamental masonry walls at least 6 feet in height and/or any required landscaping.</p>
Wireless communication facilities	See <u>section 21.80</u> for detailed standards.

(Ord. of 2-28-2017)

Sec. 25.20. - Effect of requirements.

The requirements noted in this article are in addition to, or, where in conflict, supersede, those general requirements by zoning districts, as indicated in article XIX development plan requirements. For all uses permitted for conditional approval, see the processing requirements in section 2.70, conditional uses in districts.

ARTICLE XXVI. - NONCONFORMING USES, LOTS AND STRUCTURES

Sec. 26.05. - Purpose

It is the intent of this article to permit legal nonconforming lots, structures or uses to continue until they are removed or abandoned, but not to encourage their survival. However, this general statement of intent is subject to reasonable application in practice, and, in appropriate circumstances to authorize resumption, restoration, reconstruction, extension, or substitution of nonconforming uses as legal conditional uses after proper notification and review.

The City of Boyne City has been a functioning community of residences and businesses for more than 100 years, and during that period, business and residential uses have existed side by side. It is unrealistic to expect that the owner of a preexisting business located in an area zoned for residential uses will be willing to voluntarily discontinue the operation of the business when to do so will result in serious financial loss to the owner of the property.

Accordingly, realistic application of rules applicable to preexisting nonconforming uses and structures requires consideration of the reasonable choices facing the community.

- A. The State Zoning Enabling Act which sets forth the requirements for a local zoning ordinance requires that the ordinance provide that the lawful use of land or a structure exactly as the land or structure existed at the time of enactment of the ordinance may be continued, although that use or structure does not conform with the ordinance (MCL 125.583a [Repealed—See now MCL 125.3208]).
- B. The State Zoning Enabling Act also authorizes the local zoning ordinance to provide for the resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in the ordinance.
- C. The State Zoning Enabling Act authorizes the local zoning ordinance to provide for special land uses which shall be permitted in a zoning district after review and approval by the planning commission provided that the ordinance specify those special land uses and activities eligible for approval consideration, the requirements and standards upon which decisions for special land uses shall be based and the procedures and supporting materials required for application, review and approval. The words "special land uses" as used in the Enabling Statute are equivalent to the words "conditional uses" as used in the Boyne City Zoning Ordinance. (MCL 125.584a[MCL 125.583a] [Repealed—See now MCL 125.3502]).
- D. It is recognized that some preexisting nonconforming uses or structures, while not in conformance with the requirements of the zoning district in which located, are not detrimental to the neighborhood where the activity or structure has been in use for many years and long accepted. An extension or expansion of such uses may, in some cases, not be detrimental to the neighborhood.
- E. It is recognized that the continuation of a preexisting nonconforming use as it presently exists may be quite detrimental to the neighborhood, but could be voluntarily changed to some other use by the property owner which, although not a use allowable in the zoning district, would be considerably less offensive than the present use; and, therefore, a desirable goal for improvement of the community.

Accordingly, it is the expressed intent of this ordinance to authorize wide latitude to the Boyne City planning commission to aid in reviewing and resolving problems associated with nonconforming uses and structures and to grant to the planning commission discretionary authority to provide for the reasonable resumption, restoration, reconstruction, extension or substitution of nonconforming uses or structures as legal conditional uses when the requirements and standards set forth hereafter are satisfied.

Sec. 26.10. - Declaration and regulation.

Any lot or lawful use of land or a structure existing on the passage date of this zoning ordinance, or on the passage date of any future amendments which may be made to this zoning ordinance, and located in a district in which it would not be permitted, or prohibited, regulated, restricted, or otherwise unlawful as a new use or otherwise under the regulations of this zoning ordinance is declared to be a nonconforming lot, use, or structure and not in violation of this zoning ordinance. However, a nonconforming use shall be subject to, and the owner shall comply with, the regulations in this zoning ordinance.

It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their survival. Such nonconforming uses and structures are declared by this chapter to be incompatible with permitted uses in the districts involved. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are considered to present a greater public burden than nonconforming lots and structures, therefore the intent of this ordinance to gradually eliminate nonconforming uses or decrease their nonconforming status, but to permit certain nonconforming structures to continue under certain conditions, discouraging their expansion or enlargement. A

nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this article shall be deemed to require a change in the plans, construction or designated use of any structure on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this chapter, and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner except that where demolition or removal of an existing structure has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the structure involved.

Sec. 26.15. - Nonconforming uses of land.

Where, on the passage date of this zoning ordinance, or on the passage date of any future amendments which may be made to this zoning ordinance, a lawful use of land exists, which uses would not be permitted or prohibited, regulated, restricted, or otherwise unlawful by the regulations imposed by this zoning ordinance, the use may be continued so long as it remains otherwise lawful provided:

- A. No such nonconforming use shall be enlarged, increased or extended to occupy a greater area of land than was occupied on the effective date of this zoning ordinance, or on the effective date of any future amendments which may be made to this zoning ordinance;
- B. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that portion occupied by such use on the effective date of this zoning ordinance, or on the effective date of any future amendments which may be made to this zoning ordinance;
- C. If any such nonconforming use of land ceases for any reason for a period of more than one year, such land shall conform to the regulations specified by this zoning ordinance for the district in which such land is located;
- D. Those alleged nonconforming uses which cannot be proved to have been legally existing prior to the effective date of this zoning ordinance, or on the effective date of any future amendments which may be made to this zoning ordinance, shall be declared illegal nonconforming uses and shall be discontinued following such effective date; [and]
- E. No additional structure not conforming to this zoning ordinance shall be erected in connection with such nonconforming use of land.

Sec. 26.20. - Nonconforming uses of structures.

If a lawful use involving an individual structure, or a structure and premises in combination, exists on the effective date of this zoning ordinance, or on the effective date of any future amendments which may be made to this zoning ordinance, which use would not be allowed in the district in which it is located under this zoning ordinance, the lawful use may be continued so long as it remains otherwise, lawful, subject to the following:

- A. No existing structure devoted to a use not permitted by this zoning ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
- B. Any nonconforming use may be extended throughout any part of a building which was manifestly arranged, designed, or designated for such use at the time of adoption of this zoning ordinance, or at the time of adoption

of any future amendments which may be made to this zoning ordinance, but no such use shall be extended to occupy any land outside such building;

- C. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use, provided the planning commission determines that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. Whenever a nonconforming use has been changed to a conforming use, or to a use permitted in a district of greater restrictions, it shall not thereafter be changed to a nonconforming use;
- D. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed;
- E. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or ceases for one year, or for a total of 12 months during any two-year period, the structure, or structure and premises in combination, shall not thereafter be used, except in conformance with the regulations of the zoning district in which it is located. Structures occupied by seasonal uses shall be excepted from this provision; [and]
- F. Where a nonconforming use status applies to a structure and premises in combination, the removal or destruction of the entire structure, shall eliminate the nonconforming status of the land.

Sec. 26.25. - Nonconforming structures.

Where a lawful structure exists on the effective date of this zoning ordinance, or on the effective date of any future amendments which may be made to this zoning ordinance, which structure could not be built under this zoning ordinance by reasons of restrictions on area, lot coverage, height, yards, its location on the lot or other requirements concerning the structure, such structure may be continued as long as it remains otherwise lawful, subject to the following:

- A. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. Should such structure be altered or modified so as to eliminate, remove or lessen any or all of its nonconforming characteristics, then such nonconforming characteristics shall not be later reestablished or increased;
- B. If such structure is moved for any reason whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved;
- C. If any such nonconforming structure ceases being used for any reason for a period of more than one year, any subsequent use of such structure shall conform to the regulations specified in this zoning ordinance for the district in which such structure is located;
- D. Should such structure be destroyed by any means to an extent greater than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this article; [and]
- E. A residential nonconforming structure may be allowed to expand; provided the expansion does not increase the size of the established footprint, or the expansion is within a yard which retains compliance with the required setback and height (e.g., a home with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback remains conforming). Provided, further, that the following criteria are met for the subject structure:
 1. The cost of such work shall not exceed 50 percent of the market value of such residential structure prior to the time such work is started;
 2. The only nonconforming situation on the parcel shall be dimensional ones related to the house and/or garage; [and]

3. Any other expansion shall be prohibited unless a variance is granted by the zoning board of appeals.

Sec. 26.30. - Nonconforming lots of record.

- A. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this zoning ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on the effective date of this zoning ordinance; provided such lot is located in a block on which 51 percent or more of the lots on both sides of the street are occupied by single-family dwellings. Where 51 percent or more of the existing homes are built upon a larger lot or combination of lots, a building permit will not be granted for a lot of less area or width than the size of the lots of the majority of the dwellings existing on the passage date of this zoning ordinance.
- B. In those areas where less than 51 percent of the lots are built upon in a one-block area, the provisions regarding the use of combined lots shall apply.
- C. Permission to use a single nonconforming lot as provided in this section shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district. However, yard dimensions and other requirements, not involving lot area or lot width, or both, shall conform to the regulations for the district in which the lot is located.
- D. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record on the passage date of this zoning ordinance, and if all or part of the lots does not meet the requirements for lot width and area as established by this zoning ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this zoning ordinance. No portion of such parcel shall be used or occupied, which portion does not meet lot width and area requirements established by this zoning ordinance, nor shall any division of the parcel be made which leaves remaining any lot width or area below the requirements stated in this zoning ordinance.

Sec. 26.35. - Restoration and repair.

- A. On any nonconforming structure, or on any portion of a structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repairs or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding 25 percent of the current state equalized valuation of the nonconforming structure or portion thereof, as the case may be; provided that the cubic content existing when it became nonconforming shall not be increased.
- B. If a nonconforming structure, or a portion of a structure containing a nonconforming use, becomes physically unsafe or unlawful due to a lack of repairs and maintenance, and is declared by the city to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

Sec. 26.40. - Restoration of damaged buildings.

Nothing in this zoning ordinance shall prevent the reconstruction, repair, restoration and continued use of any nonconforming building or structure damaged by fire, collapse, explosion, acts of God or acts of public enemy, subsequent to the effective date of this zoning ordinance, wherein the expense of such reconstruction does not exceed 30 percent of the state equalized valuation of the entire building or structure at the time such damage occurred, provided that all of the following apply:

- A. Such valuation shall be subject to the approval of the planning commission;

B. Such restoration and resumption shall take place within six months of the time of such damage and it shall be completed within one year from the time of such damage; [and]

C. Such use shall be identical to the nonconforming use permitted and in effect directly preceding such damage.

Where pending insurance claims require an extension of time, the planning commission may grant a time extension, provided that the property owner submits a certification from the insurance company attesting to the delay. Until such time as the debris from the fire damage is fully removed, the premises shall be adequately fenced or screened from access by children who may be attracted to the premises. No fee shall be charged for an appeal under this section.

Sec. 26.45. - Change of nonconforming use.

Whenever a zoning district shall be changed, any then existing nonconforming use in such changed district may be continued, provided all other regulations governing the use are complied with. Whenever a nonconforming use of a building or premises has been changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.

Sec. 26.50. - Nonconforming use discontinued.

In the event any nonconforming use is discontinued for a period of one year, it shall be presumed that the owner thereof intends to abandon the right to continue or resume the same and any subsequent use shall conform to the uses permitted in the district in which the premises are located.

The owner of the property upon which the nonconforming use is located shall be entitled to submit proof of intent to the planning commission to continue the use to rebut the presumption of abandonment; however, the burden of such proof shall rest upon the property owner. If the planning commission determines that the owner did not intend to abandon the right of continuation of the nonconforming use, the owner shall be entitled to resume the use previously made.

Sec. 26.55. - Continuation of uses.

When a nonconforming use of property is discontinued through vacancy, lack of operation or other similar conditions for a period of one year or more, thereafter no right shall exist to maintain on such property a nonconforming use unless the zoning board of appeals grants such privilege within six months after such discontinuance. No nonconforming use, if changed to a use permitted in the district in which it is located, shall be resumed or changed back to a nonconforming use.

Sec. 26.60. - Change of use.

The use of a nonconforming building or structure may be changed to another more restrictive use. Where the use of a nonconforming building or structure is hereafter changed to a more restrictive use, it shall not thereafter be changed to a use which is less restrictive.

Sec. 26.65. - Extensions; enlargements; moving.

No nonconforming use of any land or structure shall hereafter be enlarged or extended. No nonconforming building or structure shall be moved in whole or in part to another location unless such building or structure and the off-street parking spaces, yards and other open spaces provided are made to conform to all the regulations of the district in which such building or structure is to be located.

Sec. 26.70. - Change of tenancy or ownership.

There may be a change in tenancy, ownership or management of an existing nonconforming use, provided there is no change in the nature or character of such nonconforming use.

Sec. 26.75. - Acquisition of nonconformities; removal and resale.

- A. The planning commission may, from time to time, recommend to the city commission the acquisition of private property or an interest in private property that does not conform in use or structure to the regulations and restrictions of the various districts defined in this zoning ordinance, and may recommend the removal of such use or structure.
- B. Whenever the city commission has under advisement the acquisition by purchase, condemnation or otherwise, as provided by law, of any nonconforming building, structure or use, a preliminary public hearing thereon shall be held before the city commission. Not less than 15 days before the hearing, a notice of the time, place and purpose of such public hearing shall be published in a paper circulating in the city, and the city clerk shall send by mail, addressed to the owner of any such property at the address given in the last assessment roll, a written notice of the time, place and purpose of such hearing. If the cost and expense, or any portion thereof, is to be assessed to a special district, the city clerk shall be directed to furnish the city commission with a tentative special assessment district, the tentative plan of assessment, the names of the respective owners of the property in such district and the addresses of such owners as given in the last assessment roll. The city clerk shall also send the notice to the respective owners in the tentative assessment district.
- C. Whenever the city commission, after a public hearing as required in subsection (C) hereof, declares, by resolution, that proceedings be instituted for the acquisition of any property on which is located a nonconforming building, structure or use in accordance with the laws of the state, the City Charter, this zoning ordinance and other applicable ordinances of the city, the city clerk shall send, by registered mail, a certified copy of such resolution to the respective owners of the properties in any special assessment district, at the addresses given in the last assessment roll.
- D. Upon the passing of title to the private property so acquired, as provided in subsection (D) hereof, to the city, the city commission shall cause the discontinuance or removal of the nonconforming use or the removal, demolition or remodeling of the nonconforming structure. The city commission shall thereafter order such property sold or otherwise disposed of, but only for a conforming use. The city commission shall confirm the cost and expense of such project and report any less cost to the county equalization department. The city clerk shall then prepare an assessment roll in the manner provided for in the City Charter, these Codified Ordinances and other applicable ordinances of the city. Such assessment roll may, in the discretion of the city commission, be in one or more, but not more than five, annual installments.

Sec. 26.80. - Certificates of occupancy; records.

- A. If, at any time after the adoption of this zoning ordinance, the city becomes aware of a nonconforming use, the owner of such nonconforming use shall be notified by the planning director of the provisions of this section and that his property constitutes a nonconforming use. Within 30 days after receipt of such notice, the owner shall apply for and be issued a certificate of occupancy by the city for the nonconforming use. The application for such certificate shall designate the location, nature and extent of the nonconforming use and such other details as may be necessary for the issuance of the certificate of occupancy.
- B. If the owner of a nonconforming use fails to apply for a certificate of occupancy within 30 days after receipt of such notice, the use ceases to be nonconforming and is declared to be in violation of this zoning ordinance. The city clerk

and the city attorney shall take appropriate action to enjoin such violation.

- C. If the city finds, upon reviewing the application for a certificate of occupancy, that the existing use is illegal or in violation of any other ordinance or law, or if he finds that the building for which the certificate is requested has been constructed or altered for the existing use or any other use without full compliance with the building ordinance or zoning ordinance in effect at the time of construction or alteration, he shall not issue the certificate of occupancy but shall declare such use to be in violation of this zoning ordinance.
- D. Within six months after the adoption of this zoning ordinance, or any amendment thereto, the city shall prepare a record of all known nonconforming uses and occupations of lands, buildings and structures including tents and trailer coaches, existing at such time. Such record shall contain the name and address of the owner of record of such nonconforming use and of any occupant, other than the owner, the legal description of the land and the nature and extent of such use. Such list shall be available at all times in the office of the city clerk.

Sec. 26.85. - Application to previously filed plans.

In any case where plans and specifications for a building or structure have been filed, which building or structure would conform with the zoning regulations in effect on the date of such filing, but not with the regulations of this zoning ordinance, and where a zoning permit for such building or structure has been issued and construction work started on the effective date of this zoning ordinance, such work may proceed, provided it is completed within one year of such date.

ARTICLE XXVII. - ZONING BOARD OF APPEALS

Sec. 27.05. - Purpose.

In order that the objectives of the ordinance from which this article was derived may be fully and equitably achieved, that a means shall be provided for competent interpretation of the ordinance from which this article was derived, that adequate but controlled flexibility be provided in the application of the ordinance from which this article was derived, that the health, safety and welfare of the public is secured, and that justice be done, there is hereby established a zoning board of appeals.

(Ord. of 4-13-2010)

Sec. 27.10. - Creation, membership, terms of office.

There is hereby established in and for the City of Boyne City a zoning board of appeals, which shall perform its duties and exercise its powers as provided in Article VI of the Michigan Zoning Enabling Act of 2006, P.A. 110 of 2006, as amended (MCLA 125.3101) in such a way that the objectives of this zoning code shall be observed, public safety secured and substantial justice done.

The city commission shall appoint a zoning board of appeals consisting of five members, one of whom may be from the city commission, one may be from the planning commission and a minimum of three at large. Appointments shall be made for three-year terms provided that the initial appointments are to be two members appointed for one-year terms, two members for two-year terms, and one member for a three-year term.

Members of the board of appeals may be removable by the city commission misfeasance, malfeasance, nonfeasance in office upon written charges and after public hearing.

The city commission may appoint, in accordance with Article VI, subsection 5 of the Michigan Zoning Enabling Act of 2006, P.A. 110 of 2006 as amended (MCLA 125.3101), not more than two alternate members for the same term as regular members of the board. An alternate member may be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of a conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the board.

(Ord. of 6-24-2008; Ord. of 4-13-2010)

Sec. 27.15. - Officers; legal counsel.

The chairperson and vice-chairperson of the zoning board of appeals shall be elected by the members of the board at the May annual meeting. The city attorney or his or her representative shall act as legal counsel for the board and, subject to prior approval of the city commission, shall be present at meetings of the board upon request.

(Ord. of 4-13-2010)

Sec. 27.20. - Rules of procedure.

- A. Hearings shall be public and minutes, including action taken by the members, shall be kept for public record by its designated secretary, and submitted to the city clerk for filing.
- B. A quorum will consist of a majority of the members.
- C. An affirmative vote of a majority of member shall be required to reverse any order, requirement, decision or determination of the city manager, an administrative official of the city, or the planning director except that a two-thirds majority of members shall be necessary to grant any variances from uses of land which may be permitted by the ordinance from which this article was derived.
- D. An appeal to the zoning board of appeals may be filed by a property owner. Said appeal, which shall specify the ground thereof, shall be made to the planning director who shall transmit said appeal to the zoning board of appeals.
- E. A public hearing shall be held for all applications, interpretations and/or appeals to the zoning board of appeals. Notice of public hearing of an appeal or application shall be given, stating time and place of said hearing, by insertion in a newspaper of general circulation in the City of Boyne City 15 days prior to said hearing date. In addition, all persons who own real property or are occupants of structures within 300 feet of the property affected shall be notified of the hearing by personal delivery or the mail. In the case of a structure containing more than four dwelling units or other distinct spatial areas owned or leased by different individuals or businesses, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.
- F. Records and minutes shall be recorded of all proceedings which shall contain evidence and data relevant to every case considered together with the votes of the members and the final disposition of such case. The grounds of every determination shall be stated. Such minutes shall accompany and be attached to the standard forms required of persons appealing, as part of the zoning board of appeals' permanent records.

(Ord. of 4-13-2010)

Sec. 27.25. - General powers and duties.

The zoning board of appeals is a body of limited powers. The board shall have the specific powers and duties as set forth in this article, all jurisdiction and powers prescribed in other chapters of this zoning ordinance or the code of ordinances, and all jurisdiction and powers granted by Article VI of the Michigan Zoning Enabling Act of 2006, P.A. 110 of 2006, as amended (MCLA 125.3101). The power or authority to alter or change this zoning ordinance or the zoning map is reserved to the city commission in the manner provided by law.

(Ord. of 4-13-2010)

Sec. 27.30. - Administrative reviews.

The zoning board of appeals may hear and decide appeals when it is alleged by the appellant that there is an error of law in any order, requirement, permit, decision, determination or refusal made by the city manager, planning director, or any other administrative official in carrying out or enforcing this zoning ordinance. The board may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination and may issue or direct the issuance of a permit.

(Ord. of 4-13-2010)

Sec. 27.35. - Appeals.

- A. An appeal may be taken to the zoning board of appeals by any person, officer, department, board or bureau affected by a decision of the city concerning this zoning code. Such appeal shall be taken within 60 days from the decision by filing with the planning director and with the board a notice of appeal specifying the grounds thereof. The planning director shall forthwith transmit to the board all of the papers constituting the record upon which the action appealed from was taken.
- B. The board shall select a reasonable date, time and place for the hearing of the appeal, shall give due notice thereof to the parties and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney.

(Ord. of 4-13-2010)

Sec. 27.40. - Interpretation of zoning ordinance.

The zoning board of appeals shall interpret this zoning ordinance text and map in such a way as to carry out the intent and purpose of the comprehensive plan. In the case of any question as to the location of any boundary line between zoning districts, the board shall interpret the zoning map after receiving a recommendation from the planning commission.

(Ord. of 4-13-2010)

Sec. 27.45. - Standards for non-use variances.

- A. The zoning board of appeals may authorize, upon an appeal, a non-use variance from the strict application of any provision of this zoning ordinance where, by reason of exceptional irregularity, narrowness, shallowness, shape, or area of a specific piece of property at the time of enactment of the ordinance from which this article was derived, or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of this zoning ordinance would result in peculiar or exceptional practical difficulties upon the owner of such property.
- B. In hearing and deciding appeals for non-use variances, the board shall adhere to the following criteria in determining whether or not practical difficulties exist:

1. Requiring the owner to comply with the regulations governing area, setbacks, frontage, height, bulk, density or other requirements would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity with such regulations unnecessarily burdensome.
2. The variance granted is the smallest variance necessary to do substantial justice to the owner as well as to other property owners.
3. The ordinance can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured.
4. The need for the variance is not self created.
5. The need for the variance is due to unique circumstances of the property itself, and not due to general conditions in the area or to circumstances related to the owner personally or to others residing on the property.

The board shall grant no non-use variance if it finds an application does not meet all of the above listed criteria for determining whether or not a practical difficulty exists.

Sec. 27.50. - Standards for Use Variances.

In consideration of variances from the allowed uses as prescribed by the ordinance from which this article was derived, the zoning board of appeals shall, first determine that the proposed variation from use affirmatively meets all of the following general standards for unnecessary hardship:

- A. The proposed variation involves exceptional circumstances not found in other areas of the same zoning district.
- B. The proposed variation will be in harmony with the general purposes and intent of this zoning ordinance, and the comprehensive plan.
- C. The proposed variation will not in any respect impair the public health, safety, comfort or welfare of the inhabitants of the city.
- D. The proposed use will be of such location, size and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood.
- E. The proposed use will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic, with particular attention to minimizing child-vehicle contact in residentially zoned districts.
- F. The location, size, intensity, site layout and periods of operation of such proposed use will be designed to eliminate any possible nuisance emanating therefrom, which nuisance might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke or lights.
- G. The location and height of buildings or structures and the location, nature and height of walls and fences will be such that the proposed use will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.

(Ord. of 4-13-2010)

Sec. 27.60. - Conditions of appeals and variances.

The zoning board of appeals, in acting favorably on any appeal in connection with a request for a variance, may attach any conditions to its approval which it finds necessary to accomplish the reasonable application of the standards set forth in this article. In addition, the board may require performance bonds to ensure compliance with any requirements deemed necessary

for approving any variance. Following the establishment of any land use pursuant to a variance, any change and/or modification, as well as the original provisions of the building and site plan which have not been modified, shall be maintained as a condition of the establishment of any use to which they are appurtenant and applicable. The board may also deny any appeal but only in accordance with such standards.

(Ord. of 4-13-2010)

Sec. 27.65. - Effective period of orders.

No order of the zoning board of appeals permitting the erection or alteration of a building, an open air land use or a parking lot shall be valid for longer than six months unless such use is established within such period or a permit for such erection or alteration is obtained within such period and such erection or alteration is commenced and proceeds to a completion in accordance with the terms of permit. However, where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a zoning permit for the erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with such permit.

(Ord. of 4-13-2010)

Sec. 27.70. - Appeals to circuit court.

- A. The decision of the zoning board of appeals shall be final. However, a person having an interest affected by this zoning ordinance may appeal such decision to the circuit court, within 30 days after the zoning board of appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals if there is not chairperson, or within 21 days of approval of the formal record by the board. Upon appeal, the court shall review the record and decision of the board to ensure that the decision:
 1. Complies with the Constitution and laws of the state;
 2. Is based upon proper procedure;
 3. Is supported by competent, material and substantial evidence on the record; and
 4. Represents the reasonable exercise of discretion granted by law to the board.
- B. If the court finds that the record of the board is inadequate to make the review required by this section, or that there is additional evidence which is material and with good reason was not presented to the board, the court shall order further proceedings before the board on conditions which the court considers proper. The board may modify its findings and decision as a result of the new proceedings or may affirm its original decision. The supplementary record and decisions shall be filed with the court.
- C. As a result of the review required by this section, the court may affirm, reverse or modify the decision of the board.

(Ord. of 4-13-2010)

Sec. 27.80. - Stay of proceedings.

An appeal stays all proceedings in furtherance of the action appealed from unless the planning director certifies to the zoning board of appeals after the notice of the appeal shall have been filed with him or her that, for reasons of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceeding shall not be stayed otherwise than by a restraining order, which may be granted by the zoning board or by circuit court, upon application.

(Ord. of 4-13-2010)

Sec. 27.85. - Fees.

The city commission may, from time to time, prescribe and amend, by resolution, a reasonable schedule of fees to be charged to the applicants for appeals to the board of appeals. At the time the notice for appeal is filed, said fee shall be paid to the city treasurer.

(Ord. of 4-13-2010)

ARTICLE XXVIII. - ADMINISTRATION AND ENFORCEMENT

Sec. 28.10. - Administration.

- A. The provisions of this ordinance shall be administered by the city commission for the City of Boyne City in accordance with the State of Michigan, Act 207, of the Public Acts of 1921, as amended.
- B. The city commission shall authorize the planning director or zoning administrator to act as its officer and, except as otherwise provided in this ordinance, the planning director or his representative shall administer and enforce this ordinance, including the receiving and processing of applications for zoning permits, appeals for variances or other matters the zoning board of appeals or planning commission is required to decide. The planning director or his representative shall also be responsible for the inspection of premises, the issuance of zoning permits and institution of proceedings for the enforcement of the provisions of this zoning ordinance.

Sec. 28.20. - Zoning permits.

- A. It shall be unlawful for any person to commence excavation for any building or structure or to commence the erection, addition, alteration or repair of any building, structure or parking area or repair or move any building or structure; and no land use shall be commenced until a zoning permit has been secured from the planning director or zoning administrator. Except upon written order of the zoning board of appeals, no such zoning permit shall be issued for any building where the construction, addition, alteration or use thereof would be in violation of any of the provisions of this ordinance.
- B. Exempted from the zoning permit requirements are facial alterations, structures of 100 square feet or less, installation of siding, windows, doors, shingles, and replacements of existing or deteriorated materials and ordinary maintenance repairs made on all dwellings and their related outbuildings. This exemption does not eliminate the necessity for compliance with other county, state, or federal permitting requirements.

Sec. 28.30. - Zoning permit application.

- A. Application for a zoning permit shall be filed in writing with the city signed by the person, firm, co-partnership or corporation requesting the same or by the duly authorized agent of such person, firm, co-partnership or corporation. Prior to submitting the application, all corners of the property and the corners of the proposed structure(s) shall be staked. There shall be submitted with all applications for zoning permits one copy of a plot plan, giving accurate dimensions on either a scale drawing or a rough sketch. Drawings shall be required on all structures and shall contain the following information:
 1. Legal description;
 2. Existing and intended use of the structure;
 3. Lines and dimensions of the lots to be used;
 4. Location upon the lot of all existing and proposed structures and any streets bordering the property;

5. Application for zoning permits under the provision of this ordinance shall be accompanied by evidence of ownership of all property affected by the coverage of the permit;
 6. Evidence that all required federal, state and county licenses or permits have been acquired or that applications have been filed for same;
 7. Other information with respect to the proposed structure, use, lot and adjoining property as may be required by the planning director or zoning administrator; [and]
 8. Evidence that any public infrastructure complies with the city's construction standard.
- B. The written approval of the water supply and sewage disposal facilities, when required from the Charlevoix County Health Department or the Boyne City Water and Sewer Department shall accompany the zoning permit, which shall be filed and retained by the office of the planning director or zoning administrator. In addition, zoning permits will not be issued for lots or parcels with frontage on undeveloped major, local or private streets. It shall be the responsibility of the developer(s) to bring that unimproved street up to the city construction standards when seeking to build on lots or parcels fronting on unimproved streets or roads.
- C. Aesthetic design. Any structure shall be compatible in design and appearance with the characteristics of the neighborhood and community. For any structure, a zoning permit shall be required prior to construction or placement upon any building site. The planning director shall review said plans for compatibility in design and appearance with the existing characteristics of the neighborhood and the community. In the event of disapproval thereof by the planning director, the applicant shall have the right to appeal such decision to the zoning board of appeals for further review and consideration. The zoning board of appeals shall have the authority to overrule or concur with the decision of the planning director in this regard.

In determining compatibility with community aesthetic standards, the reviewing officer or board shall consider but not be limited to the following: exterior vertical and horizontal dimensions; roof design; exterior siding materials, texture or finish, and application thereof; foundation appearance; window and door appearance; and building shapes and sizes.

- D. In cases of minor alterations, the planning director or zoning administrator may waive portions of the foregoing requirements obviously not necessary for determination of compliance with this ordinance.
- E. Any permit required by this zoning ordinance shall be displayed face out, within 24 hours of its issuance by placing the same in a conspicuous place on the premises facing the nearest street and shall be continuously so displayed until all work is completed.

Sec. 28.35. - Duration of zoning permits.

Zoning permits shall expire two years from the date of issuance.

(Ord. of 6-24-2008)

Sec. 28.40. - Fees.

The city commission may, from time to time, prescribe and amend, by resolution, a reasonable schedule of fees to be charged to applicants wishing to rezone, seek development plan approval, or obtain a zoning permit within the City of Boyne City. Before the application is considered, the applicant, with the exception of the city or a city official acting on behalf of the city, shall deposit said fee with the city treasurer.

Sec. 28.50. - Certificate of occupancy.

It shall be unlawful to use or permit the use of any structure or premises hereafter altered, extended or erected, until the planning director or zoning administrator or his representative shall have made an inspection of the premises and shall have approved the same for occupancy.

Sec. 28.60. - Violations; municipal civil infractions.

- A. Any person who violates any provision of this ordinance is responsible for a municipal civil infraction, subject to payment of a civil fine pursuant to the City of Boyne City Municipal Civil Infraction Ordinance, as amended, plus costs and other sanctions, for each violation (as authorized by section 24 of Act 184 of the Public Acts of Michigan of 1943, as amended, the City of Boyne City Municipal Civil Infraction Ordinance, and other applicable laws).
- B. Repeat offenses under this ordinance shall be subject to increased fines, as provided by the City of Boyne City Municipal Civil Infraction Ordinance, as amended.
- C. Each day on which any violation of this ordinance occurs or continues constitutes a separate offense, subject to separate sanctions. The paying of a fine or sanctions under this ordinance shall not exempt the offender from meeting the requirements of this ordinance.
- D. The city's planning director, and the city's authorized city officials (as defined by the Municipal Civil Infraction Ordinance, as amended) are hereby designated as the authorized city officials to issue municipal civil infraction citations for violations of this ordinance.
- E. A violation of this ordinance is deemed to be a nuisance, per se. In addition to any remedies available at law, the city may bring an action for an injunction or other process against any person to restrain, prevent or abate any violation of this ordinance.

Sec. 28.70. - Interpretation and conflict.

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

ARTICLE XXIX. - VALIDITY, SAVING CLAUSE, REPEAL AND EFFECTIVE DATE

Sec. 29.10. - Validity.

If any part, parts, section, sections, provision, clause or portions of this ordinance shall be adjudged invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of the ordinance as a whole or of any other part, section, clause, provision or portion of this ordinance.

Sec. 29.20. - Saving clause.

The enactment of this ordinance shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of an ordinance of Boyne City. It is the intent of this ordinance to prohibit the expansion, or continuance, if abandoned, of uses or structures which were valid preexisting nonconforming uses or structures prior to the adoption of the

prior Boyne City Zoning Ordinance, A-28 effective March 25, 1982, as amended, if such uses or structures are also prohibited by the provisions of this ordinance. Accordingly, said prior Zoning Ordinance (A-28) is hereby preserved and not repealed as to such structures or uses which are prohibited by the provisions of both this ordinance and the same prior Zoning Ordinance A-28.

Regulation modification or alteration of such pre-existing structures or uses in existence prior to March 25, 1982, shall be governed by the provisions of this ordinance; however, in order to be classified as a valid pre-existing nonconforming use under the provisions of this ordinance, such use or structure must have been validly in existence and use prior to March 25, 1982.

Sec. 29.30. - Repeal.

The existing zoning regulations of the City of Boyne City, identified as A-28 effective March 25, 1982, are hereby repealed.

The adoption of this ordinance, however, shall not affect nor prevent any pending or future prosecution of, or action to abate, any existing violation of said zoning ordinance, as amended, if the violation is also a violation of the provisions of this ordinance.

Sec. 29.40. - Effective date.

This ordinance shall be in full force and effect from and after May 23, 2001. Enacted by the Boyne City Commission at a regular meeting held at 319 North Lake Street, Boyne City, Michigan on Tuesday, May 8, 2001, at 7:00 p.m.