

Hayes Township, Charlevoix County, Planning Commission

Regular Meeting of Planning Commission

July 19, 2022 7:00 pm  
Hayes Township Hall  
9195 Major Douglas Sloan Road  
Charlevoix, Michigan 49720

<https://us02web.zoom.us/j/83362098080?pwd=UUhMVnJpYk93YlM5cnpiblV0OWE3UT09>

Meeting ID: 833 6209 8080

Passcode: 009752

+1 312 626 6799 US (Chicago)

**AGENDA**

Call to Order

Pledge of Allegiance

Review of Agenda

Declarations of Conflict of Interest

Approval of Minutes of Regular PC June 21, 2022,

Public Comments Unrelated to Agenda Items

Report of Township Board Representative to the Planning Commission

Report of Zoning Board of Appeals Representative to the Planning Commission

Zoning Administrator Report

New Business: Ordinance Sections Discussion

    Zoning Board of Appeals

    Administration and Enforcement of Ordinance

    Adoption and Amendments

Set/Confirm Public Hearing Dates: Zoning Ordinance Text Amendment related to Short  
Term Rental Ordinance Rescindment Public Hearing

Set/Confirm Date of Next PC Meeting: August 16, 2022 at 7:00 pm

Public Comment

Planning Commission Comment

Adjournment

To best facilitate a hybrid meeting (in person as well as ZOOM) for the public, please adhere to the following guidelines:

In person attendance

1. Doors to the hall will open at 6:45 pm
2. Please voluntarily provide a name for the record
3. Please hold all comments until the appropriate designated public comment agenda item
4. To maintain an orderly meeting while providing opportunity for the public to be heard, Planning Commission Chairman will call names in appropriate order
5. We ask that you voluntarily state your name for the record
6. Direct all comments to the planning commission
7. Keep comments brief and to the point (3 minutes per person); deputy clerk will advise when time is up
8. Do not speak while others are speaking
9. Minutes may not be yielded to other speakers.

Via ZOOM attendance

1. Upon signing into the meeting, please voluntarily provide a name for the record
2. All ZOOM participants will be admitted from the waiting room prior to the start of the meeting
3. All ZOOM participants will remain muted until called on during the appropriate designated public comment agenda item
4. Please raise your hand to be called on during public comments
5. Direct all comments to the planning commission
6. Keep comments brief and to the point (3 minutes per person); participant will be muted at 3 minutes
7. Minutes may not be yielded to other speakers.

Note: A quorum of the Hayes Township Board members may be present at this meeting. No Hayes Township Board business will be discussed or conducted at this meeting.

## **Article VIII: Zoning Board of Appeals**

### **SECTION 8.01 ZONING BOARD OF APPEALS CREATION AND MEMBERSHIP**

The Zoning Board of Appeals (ZBA) shall perform its duties and exercise its powers as provided in the Michigan Zoning Enabling Act 110, of Public Acts of 2006, as amended, and in such a way that the ~~objectives purposes~~ of this Ordinance *as set forth in Section 1.02* shall be observed, ~~public safety secured, and justice done~~. This Board shall consist of five (5) regular members, appointed by the Township Board.

1. The first member shall be a member of the Township Planning Commission for the term of his/her office.
2. The remaining members must be selected from the electors of the Township residing outside of incorporated cities and villages and shall be representative of the population distribution and of the various interests present in the Township. One (1) member may be a member of the Township Board.
3. An elected officer of the Township shall not serve as chairman. An employee or contractor of the Township Board may not serve as a member or an employee of the Zoning Board of Appeals.
4. The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called as specified to serve as a member of the Zoning Board of Appeals in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which a member has abstained for reasons of conflict of interest. The alternate member 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 Zoning Board of Appeals.

### **SECTION 8.02 MEETINGS**

Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as such Board may determine or specify in its rules of procedure. All hearings conducted by said ZBA shall be open to the public. The Zoning Board of Appeals shall adopt its own rules of procedure, *called [state name of document]* and keep a record of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating said fact; and shall file a record of its proceedings in the office of the Township Clerk, and shall be a public record. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance or to effect any variation of this Ordinance.

The Zoning Board of Appeals shall not conduct business unless a majority of the Board of Appeals regular members are present.

### SECTION 8.03 JURISDICTION

1. Except for Planning Commission decisions concerning special use permits, ~~and Planned Unit Developments and shoreland landscaping plans~~<sup>1</sup>, an appeal concerning the administration of the provisions of this Ordinance may be taken to the Zoning Board of Appeals within the timeframe defined in the general rules and procedures adopted by the Zoning Board of Appeals. If such a timeframe is not specified, appeals shall be filed within thirty (30) days of the decision of the official or body from which the appellant seeks relief.
2. The ZBA may hear appeals made by any person who alleges he or she has been aggrieved by a decision of the official or body, except for Zoning Administrator decisions regarding enforcement of this Ordinance.
3. The ZBA may grant variances as provided for in **Section 8.07 Variances**.
4. The ZBA may also interpret the location of Zoning District boundaries and may interpret the provisions of this Ordinance.
5. An appeal may be made by any person, firm or corporation, or by any Officer, Department or Board of the Township. The appellant shall file with the Zoning Board of Appeals, on blanks or forms to be furnished by the Zoning Administrator, a notice of appeal specifying the grounds for the appeal.
6. The Zoning Administrator shall transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The final decision of such appeal shall be in the form of a resolution either reversing, modifying or affirming, wholly or partly, the decision or determination appealed from. Reasons for the decision must be stated.
7. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney.

### SECTION 8.04 EXERCISING POWER

~~In exercising the above powers, the Zoning Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the official or body from whom the appeal is taken.~~

*In exercising the above powers, the Zoning Board of Appeals may modify, reverse or affirm, wholly or partly, the order, requirement, decision or determination being appealed and may make such order, requirement, decision or determination as ought to be made. To that end the ZBA shall have all the powers of the official or body that made the order, requirement, decision or determination being appealed.*

### SECTION 8.05 APPLICATION REQUIREMENTS

The applicant shall submit, *with the associated fee*, seven (7) copies of a completed application,

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<sup>1</sup> *The ZBA has questions and concerns about the meaning of this proposed language; it is included for discussion purposes.*



with associated fee, surveys, plans and data as required in **Article V: Site Plan Review**, ~~or~~ and other information deemed reasonably necessary *by the applicant* for making any informed decision on his or her appeal, not less than thirty (30) days prior to the date of the hearing.

## **SECTION 8.06 NOTICE REQUIREMENTS FOR ZONING BOARD OF APPEALS PUBLIC HEARINGS**

The notices for all public hearings before the Zoning Board of Appeals concerning appeals, interpretations, and variances shall comply with all of the following applicable provisions:

1. For an appeal or a request for an interpretation, the notice shall comply with all of the following:
  - A. The content of the notice shall include all of the following information:
    - 1) A description of the nature of the appeal or interpretation request.
    - 2) If the appeal or interpretation request involves a specific parcel, then the notice shall describe the property involved. The notice shall also include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no such street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.
    - 3) The time, date, and place the appeal or interpretation request will be considered.
    - 4) The address where and the deadline when written comments will be received concerning the appeal or interpretation request.
  - B. The notice shall be published in a newspaper of general circulation within the Township not less than 15 days before the scheduled public hearing.
  - C. The notice shall be sent by first-class mail or personal delivery to the person filing the appeal or requesting the interpretation and, if the appeal or interpretation request involves a specific parcel, to the owners of the property involved not less than 15 days before the scheduled public hearing.
  - D. If the appeal or interpretation request involves a specific parcel, then the notice shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property involved and to the occupants of all structures within 300 feet of the property involved not less than 15 days before the scheduled public hearing, regardless of whether the property or occupant is located in the Township. If the name of the occupant or tenant is not known, the term "occupant" may be used in making notification under this subsection.<sup>2</sup>
2. For a variance request, the notice shall comply with all of the following:
  - A. The content of the notice shall include all of the following information:
    - 1) A description of the nature of the variance request.
    - 2) A description of the property on which the requested variance will apply.

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<sup>2</sup> The ZBA believes the distance cited in this provision should be the same as the distance for notice recited in the Planning Commission notice provision.

The notice shall also include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.

- 3) The time, date, and place the variance request will be considered.
  - 4) The address where and the deadline when written comments will be received concerning the variance request.
- B. The notice shall be published in a newspaper of general circulation within the Township not less than 15 days before the scheduled public hearing.
- C. The notice shall be sent by first-class mail or personal delivery to the owners of the property seeking the variance not less than 15 days before the scheduled public hearing.
- D. The notice shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property on which the requested variance will apply and to the occupants of all structures within 300 feet of the property to which the requested variance will apply not less than 15 days before the scheduled public hearing, regardless of whether the property or occupant is located in the Township. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection.
3. After providing the notice required under this section and without further notice, except that as required under the Open Meetings Act, the Zoning Board of Appeals may adjourn from time to time a duly called public hearing by passing a motion specifying the time, date, and place of the continued public hearing.

## **SECTION 8.07 VARIANCES**

The ZBA may grant dimensional variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in practical difficulty. To establish practical difficulty, the applicant must ~~establish~~ *respond to* all of the following:

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area and/or zoning district, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
2. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created).
3. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for any permitted purpose, or will render conformity with those regulations unnecessarily burdensome.
4. Whether granting the requested variance would do ~~substantial~~ justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give a ~~substantial~~ relief to the property owner and be more consistent with justice to other property owners.

5. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or Zoning District.

#### **SECTION 8.08 CONDITIONS OF APPROVAL**

The ZBA may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area, as provided for in section 9.03 of this Ordinance.

#### **SECTION 8.09 EXPIRATION OF ZBA APPROVALS**

No order of the Zoning Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than one (1) year, unless a building permit for such erection or alteration is obtained within such period and (2) substantial construction has *occurred within two years*.

#### **SECTION 8.10 REAPPLICATION**

No application for a variance, interpretation, or appeal which has been decided, in whole or in part, by the Zoning Board of Appeals shall be re-submitted for a period of one (1) year from the date of such decision, unless a rehearing is granted pursuant to section 9.04 of this Ordinance.

#### **SECTION 8.11 STAY**

An appeal to the Zoning Board of Appeals and an appeal of a decision by the Zoning Board of Appeals to Circuit Court stays all proceedings of the action appealed from, including the effectiveness of any zoning permit issued, unless the Zoning Administrator certifies to the Zoning Board of Appeals after such appeal has been filed that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed, unless ordered stayed by the Zoning Board of Appeals or the Circuit Court.

## **Article VIII: Zoning Board of Appeals**

### **SECTION 8.01 ZONING BOARD OF APPEALS CREATION AND MEMBERSHIP**

The Zoning Board of Appeals (ZBA) shall perform its duties and exercise its powers as provided in the Michigan Zoning Enabling Act 110, of Public Acts of 2006, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and justice done. This Board shall consist of five (5) regular members, appointed by the Township Board.

1. The first member shall be a member of the Township Planning Commission for the term of his/her office.
2. The remaining members must be selected from the electors of the Township residing outside of incorporated cities and villages and shall be representative of the population distribution and of the various interests present in the Township. One (1) member may be a member of the Township Board.
3. An elected officer of the Township shall not serve as chairman. An employee or contractor of the Township Board may not serve as a member or an employee of the Zoning Board of Appeals.
4. The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called as specified to serve as a member of the Zoning Board of Appeals in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which a member has abstained for reasons of conflict of interest. The alternate member 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 Zoning Board of Appeals.

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Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as such Board may determine or specify in its rules of procedure. All hearings conducted by said ZBA shall be open to the public. The Zoning Board of Appeals shall adopt its own rules of procedure and keep a record of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating said fact; and shall file a record of its proceedings in the office of the Township Clerk, and shall be a public record. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance or to effect any variation of this Ordinance.

The Zoning Board of Appeals shall not conduct business unless a majority of the Board of Appeals regular members are present.

### SECTION 8.03 JURISDICTION

1. Except for Planning Commission decisions concerning special use permits, ~~and~~ Planned Unit Developments, ~~and Shoreland Landscaping Plans~~ an appeal concerning the administration of the provisions of this Ordinance may be taken to the Zoning Board of Appeals within the timeframe defined in the general rules and procedures adopted by the Zoning Board of Appeals. If such a timeframe is not specified, appeals shall be filed within thirty (30) days of the decision of the official or body from which the appellant seeks relief.
2. The ZBA may hear appeals made by any person who alleges he or she has been aggrieved by a decision of the official or body, except for Zoning Administrator decisions regarding enforcement of this Ordinance.
3. The ZBA may grant variances as provided for in **Section 8.07 Variances**.
4. The ZBA may also interpret the location of Zoning District boundaries and may interpret the provisions of this Ordinance.
5. An appeal may be made by any person, firm or corporation, or by any Officer, Department or Board of the Township. The appellant shall file with the Zoning Board of Appeals, on blanks or forms to be furnished by the Zoning Administrator, a notice of appeal specifying the grounds for the appeal.
6. The Zoning Administrator shall transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The final decision of such appeal shall be in the form of a resolution either reversing, modifying or affirming, wholly or partly, the decision or determination appealed from. Reasons for the decision must be stated.
7. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney.

### SECTION 8.04 EXERCISING POWER

In exercising the above powers, the Zoning Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the official or body from whom the appeal is taken.

### SECTION 8.05 APPLICATION REQUIREMENTS

The applicant shall submit seven (7) copies of a completed application, with associated fee, surveys, plans and data as required in **Article V: Site Plan Review**, or other information deemed reasonably necessary for making any informed decision on his or her appeal, not less than thirty (30) days prior to the date of the hearing.

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    - 3) The time, date, and place the appeal or interpretation request will be considered.
    - 4) The address where and the deadline when written comments will be received concerning the appeal or interpretation request.
  - B. The notice shall be published in a newspaper of general circulation within the Township not less than 15 days before the scheduled public hearing.
  - C. The notice shall be sent by first-class mail or personal delivery to the person filing the appeal or requesting the interpretation and, if the appeal or interpretation request involves a specific parcel, to the owners of the property involved not less than 15 days before the scheduled public hearing.
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2. For a variance request, the notice shall comply with all of the following:
  - A. The content of the notice shall include all of the following information:
    - 1) A description of the nature of the variance request.
    - 2) A description of the property on which the requested variance will apply. The notice shall also include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.
    - 3) The time, date, and place the variance request will be considered.
    - 4) The address where and the deadline when written comments will be received concerning the variance request.



- B. The notice shall be published in a newspaper of general circulation within the Township not less than 15 days before the scheduled public hearing.
  - C. The notice shall be sent by first-class mail or personal delivery to the owners of the property seeking the variance not less than 15 days before the scheduled public hearing.
  - D. The notice shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property on which the requested variance will apply and to the occupants of all structures within 300 feet of the property to which the requested variance will apply not less than 15 days before the scheduled public hearing, regardless of whether the property or occupant is located in the Township. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection.
3. After providing the notice required under this section and without further notice, except that as required under the Open Meetings Act, the Zoning Board of Appeals may adjourn from time to time a duly called public hearing by passing a motion specifying the time, date, and place of the continued public hearing.

#### **SECTION 8.07 VARIANCES**

The ZBA may grant dimensional variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in practical difficulty. To establish practical difficulty, the applicant must establish **respond to** all of the following:

- 1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area and/or zoning district, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
- 2. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created).
- 3. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for any permitted purpose, or will render conformity with those regulations unnecessarily burdensome.
- 4. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give a substantial relief to the property owner and be more consistent with justice to other property owners.
- 5. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or Zoning District.





## **SECTION 8.08 CONDITIONS OF APPROVAL**

The ZBA may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area, as provided for in section 9.03 of this Ordinance.

## **SECTION 8.09 EXPIRATION OF ZBA APPROVALS**

No order of the Zoning Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than one (1) year, unless a building permit for such erection or alteration is obtained within such period and substantial construction has occurred.

## **SECTION 8.10 REAPPLICATION**

No application for a variance, interpretation, or appeal which has been decided, in whole or in part, by the Zoning Board of Appeals shall be re-submitted for a period of one (1) year from the date of such decision, unless a rehearing is granted pursuant to section 9.04 of this Ordinance.

## **SECTION 8.11 STAY**

An appeal to the Zoning Board of Appeals and an appeal of a decision by the Zoning Board of Appeals to Circuit Court stays all proceedings of the action appealed from, including the effectiveness of any zoning permit issued, unless the Zoning Administrator certifies to the Zoning Board of Appeals after such appeal has been filed that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed, unless ordered stayed by the Zoning Board of Appeals or the Circuit Court.



## **Article IX: Administration and Enforcement of Ordinance**

### **SECTION 9.01 ZONING ADMINISTRATOR**

The provisions of this Ordinance shall be administered and enforced by a Township Zoning Administrator, appointed by the Township Board of Trustees for such term and subject to such conditions and at such rate of compensation as said Board shall determine as reasonable.

The Zoning Administrator shall have the power to grant or deny Zoning Permits and to make inspections of buildings or premises necessary to carry out the duties in the enforcement of this Ordinance. It shall be unlawful for the Zoning Administrator to approve any plans or issue any Permits for the excavation or construction until such plans have been inspected in detail and found to conform to this Ordinance.

~~The Zoning Administrator shall under no circumstances be permitted to make changes to this Ordinance or to vary the terms of this Ordinance in carrying out the duties of Zoning Administrator.~~

**The Zoning Administrator as enforcement officer shall interpret the application, precedent and intent of the ordinance but under no circumstances be permitted to make changes to this ordinance in carrying out the duties of Zoning Administrator.**

The Zoning Administrator shall not refuse to issue a Permit when conditions imposed by this Ordinance are complied with by the applicant despite violations of contracts, such as covenants or private agreements that may occur upon the granting of said Permit.

### **SECTION 9.02 ZONING PERMIT**

1. No building or structure subject to the provisions of this Ordinance shall hereafter be erected, structurally altered, reconstructed, used, or moved, nor shall any associated excavation or filling of land commence until a Zoning Permit application has been filed with the Township Zoning Administrator and a Zoning Permit has been issued by the Zoning Administrator, except as otherwise permitted for in this Ordinance. No Zoning Permit shall be required for any lawful use of any building or structure in existence as of the adoption date of this Ordinance. No Zoning permit shall be required for an accessory structure without a permanent foundation and which is less than two hundred (200) square feet in size. All structures shall comply with applicable district setback requirements regardless of whether a zoning permit is required.
2. The application shall be signed by the owner of the premises or his agent and shall certify that all provisions of this Ordinance and other applicable laws and requirements are to be complied with. Any application requiring approval from the Planning Commission must be submitted not less than thirty (30) days prior to a scheduled meeting for consideration at that Planning Commission meeting. The application shall be accompanied by:
  - A. A site plan, if required (see Section XXX), or a plot plan/sketch in duplicate (see Section XXX), in a scale sufficient to clearly detail as determined by the Zoning Administrator, the location and dimensions of the premises including the boundary lines of all parcels of land under separate ownership contained therein; the size, dimensions, location on the premises, and height of all buildings, structures or other impervious surfaces in existence, to be erected and/or altered; the width and alignment of all abutting streets, highways, alleys, utility locations, easements and

public open spaces; the front yard dimensions of the nearest building on both sides

of the proposed building or structure; the location and dimensions of sewage disposal facilities both on adjoining land or lots and those to be erected on the lot under consideration; and the location of all wells on adjoining lands or lots and those to be erected on the lot under consideration.

- B. The Zoning Administrator shall have the authority to require a legal ~~or certified~~ survey ~~(not a mortgage survey)~~ in the cases where there may be encroachment on the setbacks by the proposed structures or when the exact locations of lot lines are not known.
  - C. Copies of permits or waivers of permits by other agencies as may be required by statute and/or by the Zoning Administrator of this Ordinance.
  - D. Such other information as may be required to determine compliance with the Ordinance.
- 3. A Zoning Permit may not be issued until all other necessary permits required by statute have been obtained or waived with exception of those permits issued by the Charlevoix County Building Department.
  - 4. The location of the property boundaries and all structures shall be staked on the ground for Zoning Administrator approval prior to the issuance of the Zoning Permit.
  - 5. Any Zoning Permit under which ~~substantial~~ construction has not started ~~or if no substantial construction has been done in the furtherance of the zoning permit~~, the zoning permit shall expire after twelve (12) months from date of issuance. **If construction has begun the Zoning Administrator may extend if the project has passed the first inspection from the building department.**
  - 6. The Zoning Administrator shall have the power to revoke or cancel any Zoning Permit in case of failure or neglect to comply with the provisions of the Ordinance, all other necessary permits have not been obtained or in the case of a false statement or misrepresentation made in the application. The owner shall be notified of such revocation in writing.
  - 7. No Zoning Permit shall be valid until the required fees have been paid. Except for an accessory building or structure less than two hundred (200) square feet in size (which does not require a zoning permit pursuant to **Section XXX** of this Ordinance), no separate fee shall be required for accessory buildings or structures when part of the application for the principal building or structure. Applications and petitions filed pursuant to the provisions of this Ordinance shall be accompanied by the filing fees as specified by the Township Board of Trustees.

### SECTION 9.03 CONDITIONS

The Planning Commission and Zoning Board of Appeals may attach reasonable conditions on ~~discretionary~~ **planning and** zoning decisions under their jurisdiction. These conditions may include those necessary to insure 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, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, ~~and to promote the use of land in a socially and economically desirable manner.~~ **as outlined in the Master Plan.** Any conditions imposed, however, shall meet all of the following requirements:

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

2. Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
3. Be necessary to meet the intent and purpose of the Zoning Ordinance, be related to the standards established in the Ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

#### **SECTION 9.04 REHEARING PROCESS**

1. Final Decisions: Except as provided in this section, a decision of the Planning Commission or Zoning Board of Appeals shall be final. The Planning Commission or Zoning Board of Appeals may grant a rehearing under exceptional circumstances for any decision made by it. Exceptional circumstances shall mean any of the following:
  - A. The applicant who brought the matter before the Planning Commission or Zoning Board of Appeals made misrepresentations concerning a material issue, which was relied upon by the Planning Commission or Zoning Board of Appeals in reaching its decision.
  - B. There has been a material change in circumstances regarding the Planning Commission or Zoning Board of Appeals' findings of fact, which occurred after the public hearing.
  - C. The Township Attorney, by written opinion, states that in the Attorney's professional opinion the decision made by the Planning Commission or Zoning Board of Appeals or the procedure used in the matter was clearly erroneous.
2. Rehearing Procedure: A rehearing may be requested by the applicant or by the Zoning Administrator, or a rehearing may be granted by the Planning Commission or Zoning Board of Appeals on its own motion.
  - A. A request for a rehearing which is made by an applicant must be made within ~~twenty one (21)~~ **thirty (30)** days from the date of approval of the Planning Commission's or Zoning Board of Appeals' minutes regarding the decision for which the rehearing is being requested.
  - B. A request for a rehearing made by the Zoning Administrator or a rehearing granted by the Planning Commission or Zoning Board of Appeals on its own motion may be granted at any time as long as the applicant has not been prejudiced by any delay.
  - C. Whenever the Planning Commission or Zoning Board of Appeals considers granting a rehearing, it shall provide written notice to the applicant that a rehearing will be considered. The notice may be served upon the applicant by first class mail at the applicants' last known address, or may be served personally on the applicant. The notice must be served at least nine (9) days before the time set for the hearing if served by mail, or at least seven (7) days before the time set for the hearing if served by personal service. Service by mail shall be complete



upon mailing. In addition to serving the above notice on the applicant, all other notice requirements for the type of decision being heard shall be completed before the Planning Commission or Zoning Board of Appeals holds a meeting at which it considers whether to grant a rehearing.

- D. If the Planning Commission or Zoning Board of Appeals grants a rehearing, then the rehearing shall not be held until all applicable notice requirements **as stated in the above section X.04.2.c** have been satisfied.

## **SECTION 9.05 FEES**

1. To assist in defraying the costs of investigating, reviewing and administering zoning applications, appeals, rezoning requests from individual property owners, and other types of decisions which result in extra costs to the Township, the Township Board may from time to time adopt by resolution a fee schedule establishing basic zoning fees, such as those fees related to the following:
  - A. Zoning permits.
  - B. Special land use permits.
  - C. Ordinance interpretations by the Zoning Board of Appeals: appeals of administrative interpretation or request for interpretation. Appeals and requests for interpretation initiated by the Township Board, the Planning Commission, or the Zoning Administrator shall not be subject to a zoning fee.
  - D. Classification of unlisted property uses.
  - E. Requests to change a non-conforming use to another non-conforming use.
  - F. Requests for variances from the Zoning Board of Appeals.
  - G. Requests for rezoning of property by individual property owners or amendments to the Zoning Ordinance text. Rezoning of property or text amendments initiated by the Township Board, the Planning Commission, or the Zoning Administrator shall not be subject to a zoning fee.
  - H. Site plan reviews.
  - I. Requests for a planned unit development (PUD).
  - J. Any other discretionary decisions by the Planning Commission or Zoning Board of Appeals.
  - K. **Review and decisions on Shoreland Landscaping Plans by the Planning Commission.**

The amount of these zoning fees shall cover the costs associated with the review of the application or appeal, including but not limited to the costs associated with conducting public hearings, publishing notices in the newspaper, sending required notices to property owners, postage, photocopying, mileage, time spent by zoning staff, and time spent by the members of the Planning Commission and/or Zoning Board of Appeals. The basic zoning fees shall be paid before any application required under this Ordinance is processed. The basic zoning fees are non-refundable, even when an

application or appeal is withdrawn by the applicant.

2. If the Planning Commission or Zoning Board of Appeals determines that the basic zoning fees will not cover the actual costs of the application review or appeal, or if the Planning Commission or Zoning Board of Appeals determines that review of the application and/or participation in the review process or appeal by qualified professional planners, engineers, attorneys, or other professionals is necessary or advisable, then the applicant shall deposit with the Township Treasurer such additional zoning fees in an amount determined by the Planning Commission or Zoning Board of Appeals equal to the estimated additional costs. The additional zoning fees shall be held in escrow in the applicant's name and shall be used solely to pay these additional costs. If the amount held in escrow becomes less than ten (10%) percent of the initial escrow deposit or less than ten (10%) percent of the latest additional escrow deposit and review of the application or decision on the appeal is not completed, then the Planning Commission or Zoning Board of Appeals may require the applicant to deposit additional fees into escrow in an amount determined by the Planning Commission or Zoning Board of Appeals to be equal to the estimated costs to complete the review or decide the appeal. Failure of the applicant to make any escrow deposit required under this Ordinance shall be deemed to make the application incomplete or the appeal procedurally defective thereby justifying the denial of the application or the dismissal of the appeal. Any unexpended funds held in escrow shall be returned to the applicant following final action on the application or the final decision on the appeal. Any actual costs incurred by the Township in excess of the amount held in escrow shall be billed to the applicant and shall be paid by the applicant prior to the issuance of any permit or the release of a final decision on an appeal.

#### **SECTION 9.06 PERFORMANCE GUARANTEE**

In connection with the construction of improvements through site plan approval, special land use approval, **site condominium, Shoreland Landscaping Plan** or a PUD project, the Planning Commission may require the applicant to furnish the Township with a performance guarantee in the form of a cash deposit, certified check, irrevocable bank letter of credit, or surety bond acceptable to the Township in an amount equal to the estimated costs associated with the construction of public and site improvements. Public improvements mean by way of example and not limitation roads, parking lots, and water and sewer systems which are located within the development or which the applicant has agreed to construct even though located outside the development. Site improvements mean landscaping, buffering, and the completion of conditions imposed by the Planning Commission which are located within the development. For purposes of this section, the costs covered by the performance guarantee shall include all of the following: (1) the purchase, construction, and/or installation of the improvements, (2) architectural and engineering design and testing fees and related professional costs, and (3) an amount for contingencies consistent with generally accepted engineering and/or planning practice. The performance guarantee shall be deposited with the Township Clerk at or before the time the Township issues the permit authorizing the development, or if the development has been approved in phases, then the performance guarantee shall be deposited with the Township Clerk prior to the commencement of construction of a new phase. The performance guarantee shall ensure completion of the public and site improvements in accordance with the plans approved by the Planning Commission. Any cash deposit or certified funds shall be refunded for the development or each phase of a multi-phase development in the following manner:

1. One-third of the cash deposit after completion of one-third (monetary value), of the public and site improvements;
2. Two-thirds of the cash deposit after completion of two-thirds of the public and site



improvements; and

3. The balance at the completion of the public and site improvements.

Any irrevocable bank letter of credit or surety bond shall be returned to the applicant upon completion of the public improvements. If a development is to be completed in phases, then the Planning Commission may require the applicant to furnish a performance guarantee as provided in this section for each phase of the development. If an applicant has contracted with a third-party to construct the public and site improvements and the third-party has provided a bond meeting the requirements described above and the bond also names the Township as a third-party beneficiary of the bond, then the Planning Commission may accept that bond as meeting all or a portion of the performance guarantee required by this section.

## **SECTION 9.07 VIOLATIONS AND PENALTIES**

### **SECTION 9.07.1 NUISANCE PER SE**

Any land, dwellings, buildings or structures, including tents and trailer coaches, used, erected, altered, razed or converted in violation of this Ordinance or in violation of any regulations, conditions, permits or other rights granted, adopted or issued pursuant to this Ordinance are hereby declared to be a nuisance per se.

### **SECTION 9.07.2 INSPECTION**

The Zoning Administrator shall have the duty to investigate each alleged violation and shall also have the right to inspect any property for which a zoning permit has been issued to ensure compliance with the plans and conditions of the zoning permit or approved site plan.

### **SECTION 9.07.3 PENALTIES**

1. Any person, partnership, limited liability company, corporation, association or other entity who creates or maintains a nuisance per se or who violates or fails to comply with this Ordinance or any permit issued pursuant to this Ordinance shall be responsible for a municipal civil infraction and shall be subject to a fine of not more than ~~Five Hundred~~ **One Thousand** and 00/100 (\$**1000.00**) Dollars. Every day that such violation continues may constitute a separate and distinct offense under the provisions of this Ordinance. Nothing in this section shall exempt the offender from compliance with provisions of this Ordinance or prohibit the Township from seeking additional and/or equitable relief from any court to ensure compliance with the provisions of this Ordinance.
2. The Township Zoning Administrator is hereby designated as the authorized Township official to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court. The Township Board may also designate from time to time other officials to issue municipal infraction citations on behalf of the Township in connection with alleged violations of this Ordinance.
3. In addition to or in lieu of enforcing this Ordinance, as a municipal civil infraction, the Township may initiate proceedings in any court of competent jurisdiction to abate, eliminate, or enjoin the nuisance per se or any other violation of this Ordinance.

#### **SECTION 9.07.4 STOP WORK ORDER**

If construction or land uses are being undertaken contrary to a zoning permit, the Michigan Zoning Enabling Act, or this Ordinance, the Zoning Administrator or Deputy of the Zoning Administrator or any other official authorized by the Township Board is authorized to post a stop work order on the property at a suitable location, such as at an entrance, in order to prevent the work or activity from proceeding in violation of the Ordinance.

A person shall not continue, or cause or allow to be continued, construction or uses in a violation of a stop work order, except with permission of the enforcing agency to abate a dangerous condition or remove the violation, or except by court order. If an order to stop work is not obeyed, the enforcing agency may apply to the circuit court for an order enjoining the violation of the stop work order. This remedy is in addition to, and not in limitation of, any other remedy provided by law or ordinance, and does not prevent criminal or civil prosecution for failure to obey the order.

#### **SECTION 9.08 ~~CONFLICTING REGULATIONS~~ Interpretations**

~~In the interpretation of this Ordinance, this Ordinance shall control unless there exists a conflict with any other Township Ordinances, in which case the more stringent regulations will rule.~~

When this ordinance imposes a greater restriction upon the use of buildings or land, or upon the height of buildings and structures, or on lot coverage, or where this ordinance requires greater lot areas or larger yards or other open spaces than required by other laws, ordinances or private restrictions, the provisions of this ordinance shall prevail.

## **Article X: Adoption and Amendments**

### **SECTION 10.01 AMENDMENT TO THIS ORDINANCE**

1. The Township Board is authorized and empowered to cause this Ordinance to be amended, supplemented, or changed, pursuant to the authority and according to the procedures set forth in the Michigan Zoning Enabling Act, Act 110 of the Public Acts of 2006, as amended.
  - A. The regulations and provisions stated in the text of this Ordinance and the boundaries of Zoning Districts shown on the Hayes Township Zoning Map may be amended, supplemented or changed by action of the Township Board following a recommendation from the Township Planning Commission.
  - B. Proposals for amendments, (including rezonings), supplements or changes may be initiated by the Township Board on its own motion, by the Township Planning Commission or by petition of one (1) or more owners of property to be affected by the proposed amendment.
  - C. The procedure to be followed for initiating and processing an amendment shall be as follows:
    - 1) Each petition by one (1) or more persons for an amendment shall be submitted by application to the Zoning Administrator on a standard form provided and shall be accompanied by the fee as prescribed by the Township Board. No part of such fee shall be returnable to a petitioner if the public hearing is held.
    - 2) The Zoning Administrator shall notify, in writing, the Township Clerk and Chair of the Planning Commission at or before the time he or she transmits the amendment request to the Planning Commission.
    - 3) The Planning Commission shall consider each proposal for amendment on particular factors related to the individual proposal and in terms of the likely effect on the community's physical development. The Planning Commission may recommend any additions or modifications to the original proposal.
    - 4) Before ruling on any proposal the Planning Commission shall conduct at least one (1) public hearing, notice of which shall be provided as specified in **Section 10.02** of this Ordinance.
    - 5) The Planning Commission shall review and apply the following standards and factors in the consideration of any rezoning request.
      - a) Is the proposed rezoning consistent with the Hayes Township Master Plan?
      - b) Is the proposed rezoning reasonably consistent with surrounding uses?
      - c) Will there be an adverse physical impact on surrounding properties?
      - d) Will there be an adverse effect on property values in the adjacent area?
      - e) Have there been changes in land use or other conditions in the immediate area or in the community in general which justify rezoning?
      - f) Will rezoning create a deterrent to the improvement or

- development of adjacent property in accord with existing regulations?
- g) Will rezoning grant a special privilege to an individual property owner when contrasted with other property owners in the area or the general public (i.e. will rezoning result in spot zoning)?
  - h) Are there substantial reasons why the property cannot be used in accordance with its present zoning classifications?
  - i) Is the rezoning in conflict with the planned use for the property as reflected in the Land Use Plan?
  - j) Is the site served by adequate public facilities or is the petitioner able to provide them?
  - k) Are there sites nearby already properly zoned that can be used for the intended purposes?
  - l) Are other local remedies available?
- 6) Following the public hearing the Planning Commission shall submit the proposed amendment including any Zoning Map changes to the County Planning Commission. If the recommendation of the County Planning Commission has not been received within thirty (30) days after the receipt of the Ordinance by the County, it shall be conclusively presumed that the County has waived its right for review.
  - 7) The Planning Commission shall submit a final report/recommendation to the Township Board along with a summary of the comments received at the public hearing.
  - 8) The Township Board may hold additional public hearings, if they decide it is necessary. Notice of such hearing shall be provided in accordance with **Section 10.02** of this Ordinance.
  - 9) Once adopted by the Township Board, amendments to this Ordinance shall be filed with the Township Clerk, and one (1) notice of adoption shall be published in a newspaper of general circulation in the Township within fifteen (15) days after adoption. Any amendments to this Ordinance shall take effect eight (8) days after publication or at a later date as may be specified by the Township Board at the time of adoption.
  - 10) No application for a rezoning which has been denied by the Township shall be resubmitted for a period of one (1) year from the date of the last denial, except on grounds of newly discovered evidence or proof of changed conditions found valid upon inspection by the Township Planning Commission.

## **SECTION 10.02 PUBLIC HEARING NOTICE REQUIREMENTS FOR ZONING ORDINANCE AMENDMENTS**

The notices for all public hearings before the Planning Commission or Township Board concerning proposed Zoning Ordinance amendments (zoning text or map amendments) shall comply with the following applicable notice provisions:

- 1. For a proposed amendment to the text of the Zoning Ordinance, the notice shall comply with all of the following:
  - A. The content of the notice shall include all of the following information:
    - 1) A description of the nature of the proposed Zoning Ordinance amendment.

- 2) The time, date, and place the proposed Zoning Ordinance will be considered.
    - 3) The places and times at which the proposed Zoning Ordinance amendment may be examined.
    - 4) The address where and the deadline when written comments will be received concerning the proposed Zoning Ordinance amendment.
  - B. The notice shall be published in a newspaper of general circulation within the Township not less than fifteen (15) days before the scheduled public hearing.
  - C. The notice shall be given by first-class mail to each electric, gas, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the Township Clerk for the purpose of receiving the notice of public hearing.
2. For a proposed Zoning Ordinance amendment rezoning an individual property, any number of non-adjacent properties, or ten (10) or fewer adjacent properties the notice shall comply with all of the following:
- A. The content of the notice shall include all of the following information:
    - 1) A description of the nature of the proposed Zoning Ordinance amendment.
    - 2) A description of the property or properties proposed for rezoning. The notice shall include a listing of all existing street addresses within the property or properties. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property or properties. If there are no street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property or properties.
    - 3) The time, date, and place the proposed Zoning Ordinance amendment will be considered.
    - 4) The places and times at which the proposed Zoning Ordinance amendment may be examined.
    - 5) The address where and the deadline when written comments will be received concerning the proposed Zoning Ordinance amendment.
  - B. The notice shall be published in a newspaper of general circulation within the Township not less than fifteen (15) days before the scheduled public hearing.
  - C. The notice shall be sent by first-class mail or personal delivery to the owners of the property or properties proposed for rezoning not less than 15 days before the scheduled public hearing.
  - D. The notice shall also be sent first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property or properties proposed for rezoning and to the occupants of all structures within 300 feet of the property or properties proposed for rezoning not less than fifteen (15) days before the scheduled public hearing, regardless of whether the property or occupant is located in the Township. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection.



- E. The notice shall be given by first-class mail to each electric, gas, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the Township Clerk for the purpose of receiving the notice of public hearing.
3. For a proposed Zoning Ordinance amendment rezoning eleven (11) or more adjacent properties, the notice shall comply with all of the following:
- A. The content of the notice shall include all of the following information:
    - 1) A description of the nature of the proposed Zoning Ordinance amendment.
    - 2) The time, date, and place the proposed Zoning Ordinance will be considered.
    - 3) The places and times at which the proposed Zoning Ordinance amendment may be examined.
    - 4) The address where and the deadline when written comments can be sent concerning the proposed Zoning Ordinance amendment.
  - B. The notice shall be published in a newspaper of general circulation within the Township not less than fifteen (15) days before the scheduled public hearing.
  - C. The notice shall be sent by first-class mail or personal delivery to the owners of the property or properties proposed for rezoning not less than 15 days before the scheduled public hearing.
  - D. The notice shall be given by first-class mail to each electric, gas, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the Township Clerk for the purpose of receiving the notice of public hearing.
4. After providing the notice required under this section and without further notice, except that as required under the Open Meetings Act, the Planning Commission may adjourn from time to time a duly called public hearing by passing a motion specifying the time, date, and place of the continued public hearing.

#### **SECTION 10.03 ENACTMENT AND EFFECTIVE DATE**

- 1. The original zoning ordinance for Hayes Township was adopted by the Hayes Township Board of Trustees, and became effective on July 1, 1974.
- 2. This Ordinance shall become effective eight (8) days after being published in a newspaper of general circulation within the Township.

