

Article VIII Site Plan Review

8.01 Purpose

The site plan review and approval process is intended to that land uses comply with zoning district regulations, other regulations and standards outlined in this Ordinance, and applicable county, state and federal statutes.

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8.02 When Required

Site plan review and approval is required for the following uses:

- a. For all uses in all zoning districts except as indicated below.
- b. For all special uses in all zoning districts.
Site plans shall be submitted with all applications for special use permits. The review of such site plans shall be concurrent with the Planning Commission's deliberations on the application for special uses.
- c. For PUD's.
A site plan shall be submitted at the time application is made for PUD approval. The review of the site plan shall be concurrent with deliberations on Planned Unit Developments.
- d. For all site condominium and condominium subdivisions subject to the provisions of the Condominium Act (P.A. 59 of 1978, as amended).
- e. For all platted subdivisions subject to the provisions of the Land Division Act (P.A.591 of 1996, as amended).

Commented [C3]: RX: PUDs

Commented [C4]: RX: Add f. Accessory buildings and Accessory Dwelling Units.

8.03 When Not Required

Site plan review and approval is not required for the following:

- a. For single-family and two-family dwellings in any zoning district, with the exception of Accessory Dwelling Units (ADU's).
- b. For agricultural buildings associated with agricultural operations permitted by right in the Agricultural and Residential zoning districts, or
- c. For home occupations permitted as matter of right in any zoning district.

Commented [C5]: RG: Does the zoning permit application ask for a site plan for ZA to review? Does this language conflict with application request?

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RV: just need to meet setback and health department/ZA review

8.04 Prohibitions on Excavation and Construction Activities Before Site Plan Approval is Granted

No grading, removal of vegetation, filling of land, construction of buildings, building foundations, driveways, roadways, walkways, parking areas, or other improvements of any kind are permitted until a site plan has been approved in accordance with the provisions of this Article.

8.05 Responsibility for Site Plan Review

The Planning Commission has sole responsibility for the review and approval of site plans.

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8.06 Optional Pre-application Conference

Before submitting an application for site plan review, applicants are encouraged to meet with the Zoning Administrator or Planning Commission to discuss the site plan review process, to present a preliminary or conceptual site plan and to allow the Planning Commission to provide comments as to what portions of the site plan may be of special concern.

This optional, informal conference is intended to allow applicants to present concepts to the Planning

Commission, and to enable the Planning Commission to inform applicants of the Township's land use policies and other matters of specific interest or concern. Statements made by applicants or the Planning Commission during pre-application conferences shall be for informational purposes only and not be legally binding.

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8.07 Application and Review Process

Applications for site plan review shall be submitted to the Zoning Administrator not less than twenty days before the meeting at which the applicant wishes the Planning Commission to consider the application. Applications submitted less than twenty (20) days prior to such meetings shall not be accepted for consideration and will only be eligible for consideration at the Planning Commission's following monthly meeting.

Applications must be accompanied by the materials and information described below:

- a. A completed application form and application fee;
- b. An escrow fee. The Planning Commission may require the applicant to deposit money in escrow to cover actual costs of engineering, legal and planning consulting services during the review of applications; and
- c. Ten (10) copies of a site plan complying with the requirements of this Subsection. The site plan shall be an accurate, reproducible drawing at an accurate, reasonable scale showing the land subject to the application and all land within 100 feet of the land subject to the application.

Upon receipt of a completed application and site plan, the Zoning Administrator shall distribute copies of the site plan to all of the following agencies for review and comment:

1. The Charlevoix County Soil Erosion and Sedimentation Control Officer,
2. The Charlevoix County Drain Commissioner,
3. The Charlevoix County Road Commission and, if appropriate, the Michigan Department of Transportation,
4. The Northwest Michigan Community Health Agency,
5. Hayes Township fire and ambulance service providers,
6. The Michigan Department of Environmental Quality and/or Michigan Department of Natural Resources and
7. Charlevoix County Planning Department.

Comments from reviewing agencies must be received in writing by the Zoning Administrator before the site plans will be distributed to the Planning Commission for consideration. In the event reviewing agencies have no comments or concerns, agency representatives may indicate same on their copies of the site plan with an appropriate comment and signature.

Upon receipt of agency comments, the Zoning Administrator may 1) forward the site plan to the Planning Commission for formal review or 2) return the site plan to the applicant for revisions as may be required for compliance with this Article. In the event a site plan is returned to an applicant, it shall be forwarded to the Planning Commission only following its revision in response to agency comments.

8.08 Content of Site Plans

Site plans shall illustrate the following features and information, unless waived by the Planning Commission for good cause:

- a. North arrow, scale, and date of original submittal and last revision;
- b. A vicinity map;
- c. ~~tampA~~ legal description of the property;
- d. The acreage of the property subject to the application;

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RX: ?

- e. The zoning classifications of the subject parcel and adjoining parcels, including those parcels which are adjoining but are separated from the subject property by a road right-of-way;
- f. The location of proposed and/or existing lot lines and dimensions of same;
- g. Building setbacks;
- h. A grading plan showing finished contours at a minimum interval of 2 feet, and correlated with existing contours so as to clearly indicate cut and fill required (all finished contour lines are to be connected to existing contour lines at or before the lot lines);
- i. A detailed description of measures to be taken to control soil erosion and sedimentation during and after completion of grading and construction operations. This description shall include the location of proposed retaining walls, dimension and materials of same, fill materials, typical vertical section, and plans for restoration of adjacent properties, where applicable;
- j. The location and type of significant vegetation, including woodlots and individual trees twelve inches and larger in diameter at breast height;
- k. The location and elevations of existing water courses and water bodies, including county drains, man-made surface drainage ways, 100-year flood plains, and wetlands;
- l. The location of existing and proposed buildings, as well as the length, width, height, and area (in square feet) of each building;
- m. The location of all existing buildings or structures within 50 feet of the subject property;
- n. The proposed location of accessory structures, buildings, and uses, including, but not limited to, all flagpoles, light poles, storage sheds, transformers, air conditioners, generators, and similar equipment (details of the method of screening, where applicable, shall be included);
- o. The name, location, dimensions, and associated right-of-way of all existing and proposed streets (public or private) and typical cross section of same (cross section shall show surface, base, and sub-base materials); location and typical details of curbs; location, dimensions, and details of all passing lanes and deceleration/acceleration tapers or lanes; and the location, width, surface elevations, radii, and grade of all access points to the site;
- p. All driveways located within 100 feet of the site;
- q. The location and design of parking areas and number of parking spaces and unloading areas, including information on proposed curbing, barrier-free access design, and dimensions for parking spaces, circulation aisles, and unloading spaces;
- r. The design and dimensions for all exterior lighting, including any element relative to shielding light spillover onto adjacent properties and road-ways;
- s. The location and design of all sidewalks, walkways, bicycle paths, and areas for public use;
- t. The location, design, sizing, and easements related to all existing and proposed utility systems to be located on the site, including, but not limited to:
 - 1. Water lines and fire hydrants;
 - 2. Storm sewers;
 - 3. Sanitary sewer lines;
 - 4. Septic systems, if applicable; and
 - 5. Stormwater retention and detention areas.
- u. The location, size, and specifications of all signs (freestanding and signs placed on or attached to buildings);
- v. The location and specifications for all fences, walls, and other screening features with cross sections;
- w. The location and specifications for all proposed perimeter and internal landscaping, and other

buffering features (for each new landscape material, the proposed size at the time of planting must be indicated). All vegetation to be retained on the site must also be indicated, as well as its typical size by general location, or range of sizes as appropriate;

- x. The location, size, and specification for screening of all trash receptacles and other solid waste disposal facilities; and
- y. The number of employees on largest shift (If shifts overlap, indicate the number of employees for the largest 2 shifts which overlap).

8.09 Planning Commission Options for Action

The Planning Commission shall approve, approve with conditions or modifications, or deny an application for site plan approval within a reasonable period of time following the Planning Commission's first consideration of same. The Planning Commission's decision shall be based on a finding of fact that shall be incorporated into a statement containing the conclusions relative to the standards for site plan approval outlined below and which specifies the basis for the decision and any conditions imposed.

If the Planning Commission finds that the site plan complies with the provisions of this Article, the application and site plan must be approved. If the Planning Commission finds that the application and site plan do not comply with the provisions of this Article, then the application may be approved with conditions or denied.

At any point during its deliberations on an application, the Planning Commission may request that an applicant modify the site plan or present additional information deemed necessary before a decision on a proposed special use is granted. In such cases, the Planning Commission shall table consideration of the application until the amended site plan or additional information is made available by the applicant.

8.10 Conditional Approval

Reasonable conditions may be required with the approval of a site plan by the Planning Commission. These conditions may include those necessary to 1) ensure that public services, such as police, fire, ambulance and similar services are capable of accommodating increased service or facility loads caused by the proposed land use or activity 2) protect the natural environment and conserve natural resources and energy 3) ensure the use proposed on the site plan is compatible with adjacent uses of land and 4) promote the use of land in a socially and economically desirable manner.

When required, such conditions shall:

- z. Be designed to protect natural resources, the health, safety, welfare and social and economic well-being of those who will use the land use or activity under consideration, as well as those residents and landowners immediately adjacent to the proposed land use, and the community as a whole;
- aa. Be related to the valid exercise of the police power, and purposes which are affected by the proposed special land use; and
- bb. Be necessary to meet the intent and purpose of the Hayes Township Land Use Plan and Hayes Township Zoning Ordinance, and to ensure compliance with the standards for site plan approval outlined below.

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If the Planning Commission denies an application for site plan approval, the reason(s) for such denial must be included in the Planning Commission's record of proceedings on the application.

8.11 Standards for Site Plan Approval

Commented [C12]: RV: Site Plan Review and Approval

The Planning Commission's decision to approve, approve with conditions, or deny a site plan shall be based on the following criteria:

- a. Compliance with Zoning District Regulations
All buildings, structures, uses and improvements shall comply with land use, lot area, setback, parking, sign, landscaping, screening and other regulations and standards established by zoning district regulations and all other applicable regulations contained in this Ordinance.
- b. Organization of Elements
All buildings, uses and improvements illustrated on the site plan shall be harmoniously and efficiently organized in relation to topography, the size and type of the lot, the character and use of adjoining property and the type and size of buildings.

The site shall be developed so as not to impede the normal and orderly development, improvement or enjoyment of surrounding property for uses permitted in this ordinance. All buildings, structures, driveways, internal circulation routes, parking and storage areas shall be designed and located so as to minimize potential adverse effects and impacts on adjacent and nearby properties.

- a. Preservation of Natural Features and Natural Landscape
Natural features (woodlots, wetlands, watercourses, ponds, shorelines, attractive vegetation etc.) shall be preserved and protected to the greatest extent possible. As many natural features of the landscape shall be incorporated into the design and layout of the site as possible so as to buffer it from adjacent incompatible land uses, to preserve the character of the surrounding area and community as a whole and to control soil erosion and stormwater runoff.
- b. Drainage Provisions
Special attention shall be given to proper site drainage so that stormwater runoff will not affect neighboring properties or overload watercourses in the area. Stormwater management systems shall be designed in accordance with professionally accepted principles, and shall provide on-site retention or detention facilities designed to hold runoff from a 50-year frequency storm event. Naturally occurring and pre-existing drainage ways shall be used for the movement of stormwater.
Discharge of stormwater runoff from any site which may contain oil, grease, toxic chemicals, or other hazardous substances or polluting materials is prohibited unless measures to trap pollutants meet the requirements of the Michigan Department of Environmental Quality, based upon professionally accepted principles.
- c. Soil Erosion
Proposed developments or uses shall not result in soil erosion or sedimentation problems.
- d. Screening and Buffering
Screening and buffering, in the form of native vegetative landscape plantings, existing vegetation, screen fences, and the like, may be required at the discretion of the Planning Commission to insure compatibility between a site and adjoining land uses.
- e. Emergency Vehicle Access
All buildings, groups of buildings, and uses shall be arranged to allow emergency vehicle access to all improved areas during all seasons of the year under all weather conditions.
- f. Pedestrian and Vehicular Circulation
Proposed driveway entrances and exits, parking areas, service drive and other internal circulation routes are located and arranged so as to insure the safety and convenience of pedestrian and vehicular traffic. If proposed by an applicant, or required at the discretion of the Planning Commission, or as otherwise provided in this Ordinance, pedestrian and bicycle

pathways shall be insulated as completely as reasonably possible from the vehicular circulation system.

g. Compliance with Applicable County, State and Federal Statutes

Site plans shall conform to all applicable requirements of state and federal statutes. Site plan approval and an occupancy permit may be conditioned on the applicant receiving necessary state and federal permits applicable to wetlands, lakes, streams, floodplains, hazardous substances, groundwater discharges, stormwater discharges, and the like.

8.12 Certification of Approved Site Plan

Three copies of an approved site plan shall be signed and dated by the applicant and Zoning Administrator. One copy shall be provided to the applicant, one shall be retained by the Zoning Administrator as part of the Township's permanent zoning file and one shall be made part of the Planning Commission's permanent record of proceedings on the site plan.

8.13 Modification of an Approved Site Plan

a. Minor modifications to an Approved Site Plan may be approved by the Planning Commission by mutual agreement between the Township and applicants or successors in interest as follows:

1. Reorientation of buildings provided no such structure is moved more than twenty-five (25) feet from the original plan location; the move is determined to be necessary based on site conditions not previously known; the intent, concept, and objectives of the Approved Site Plan are not circumvented; and no greater impact is exerted in adjacent properties.
2. Redistribution of the dwelling units among the proposed structures, provided building heights are not increased, and the density of dwelling units is not increased.
3. Minor realignment of roads, pedestrian ways, parking areas based on the need to respect site features (topography, soils, bedrock, vegetation) or to accommodate minor reorientation of buildings.
4. Increase in total land area, with the additional undeveloped land to be protected open space or not proposed to be developed at the time of acquisition.
5. Total land area increased by purchase of adjacent previously developed property, but the use of the newly acquired adjacent property is not proposed to change and is consistent with the previously approved uses for the Approved Site Plan

b. Major Modifications

Major modifications to an Approved Site Plan shall be subject to review and approval under a new application for an Approved Site Plan. Major modifications include, but are not limited to, increase in floor area of any building in excess of one-hundred twenty (120) square feet; or increase in the number of building sites, lots, or dwelling units; increase in land area occupied by non-residential uses; decrease in open space set-aside; or the addition of other buildings, structures, uses and improvements not originally in the final Approved Site Plan.

Commented [C13]: RG: Should ZA be able to approve minor modifications?

Commented [C14]: RG: Would this require additional public hearing?

8.14 Completion Requirement

Construction of all buildings and improvements, including roadways, walkways, parking areas, landscaping, screening, and the like, shall be completed within 18 months of initiation of construction unless an extension has been granted by the Planning Commission as specified below.

8.15 Expiration of Approval

Unless a zoning permit has been issued within one calendar year (365 consecutive days) of the date of site plan approval, approval shall expire and be of no effect unless the applicant and Planning Commission have mutually agreed to a six-month extension of approval. The Planning Commission may, by mutual consent with the applicant, grant additional six-month extensions at its discretion.

8.16 Resubmittal Required In Event of Expiration

If an approved site plan has expired as set forth above, no zoning or building permits for the development or use of the subject property shall be issued until a new application for site plan review has been filed and approved by the Planning Commission as is required for any application for site plan review.

8.17 Inspection and Certification Requirements

In the event improvements associated with the site were designed by an architect or engineer, the applicant shall, following completion of construction, provide a statement, prepared by his or her engineer, certifying that all improvements have been constructed in compliance with approval as granted.

Commented [C15]: RX: architect or engineer

The Planning Commission may, as a condition of approval, assign such inspection duties to the Township's own independent professionals. In such cases, the cost for such inspections shall be borne by the applicant.

8.18 Performance Guarantees

A performance guarantee in an amount equal to 1.25 times the cost of constructing improvements as determined by the applicant and verified by the Planning Commission or authorized consultant may be required to ensure completion of improvements subject to approval under this Article.

When a performance guarantee is required, it shall be deposited with the Township Clerk prior to the issuance of a zoning permit authorizing construction of approved buildings and improvements or prior to issuance of an occupancy permit in those cases where the guarantee is being required for improvements delayed due to weather conditions. The Township shall deposit the performance guarantee, if in the form of a cash deposit or certified check, in an interest-bearing account.

If a performance guarantee is in the form of a cash deposit, it shall be rebated periodically by the Township on application by the applicant in reasonable proportion to the ratio of work completed on the required improvements.

ARTICLE IX
SUPPLEMENTAL SITE DEVELOPMENT STANDARDS

Supplemental Site Development Standards

Those permitted uses and uses allowed by Special Use Permit enumerated in any zoning district, if included below, shall be subject to the following conditions and requirements. The uses listed in this article are only allowed as listed in the Article TBD: Zoning Districts and Map.

Commented [C1]: RV: List all SUP and define standards

Commented [C2]: MM: This sentence is very confusing. I'm not sure how to reword it!

Section 9.1 Bed and Breakfast Establishments:

Bed and breakfast establishments shall be subject to the following regulations:

- A. Bed and Breakfast Establishment as an Accessory Use: The bed and breakfast establishment shall be clearly incidental to the principal residence.
- B. Principal Residence: The dwelling unit shall be the principal residence of the operator, and the operator shall live in the dwelling unit when the bed and breakfast facility is in operation.
- C. Maximum Number of Units: The number of sleeping rooms shall be established by the Planning Commission on an individual basis.
- D. Kitchen Facilities: There shall be no separate cooking facilities for the bed and breakfast establishment, other than those, which serve the principal residence. Food may be served only to those persons who rent a room in the bed and breakfast facility.
- E. Building Requirements: A building used for a bed and breakfast establishment shall comply with the following minimum requirements as established by the building code and Health Department.
- F. Parking: An off-street parking spot shall be provided for each bed and breakfast unit, in accordance with this Ordinance. Off-street parking in the front yard is prohibited, unless the yard is enclosed.
- G. The number of bathrooms and septic system size shall meet District Health Department requirements.

Commented [C3]: If an ADU is built, can owner live in it and run a B&B in main residence?

Commented [C4]: RX: that

9.2 Campgrounds:

- H. A minimum lot size shall be ten (10) acres and meet the current zoning ordinance requirements.
- I. The lot shall provide direct vehicular access to a public road. The term "lot" shall mean the entire campground or travel trailer park.

- J. Each campground shall be provided with at least one (1) public phone.
- K. All sanitary stations, privies, or any sanitary facilities shall be located at least one hundred (100) feet from property lines or in a location approved by the health department.
- L. Campground perimeter shall be completely screened by natural terrain and well maintained vegetative screening.
- M. Campsites shall be located at least fifty (50) feet from property lines.
- N. All campgrounds shall comply with State of Michigan and Health Department requirements.

Commented [C5]: MM: ?

Commented [C6]: RX: toilets, dump stations, bathrooms

9.3 Cemeteries:

- O. Location: No portion of any cemetery that is located in a wetland or a hundred year floodplain shall be developed or platted for gravesites.
- P. Accessory Buildings: A crematorium, mausoleum, columbarium, or other accessory building may be permitted within a cemetery provided that any such building shall be designed and located in accordance with a cemetery master plan, which shall be subject to Planning Commission Approval.
- Q. Setbacks: No building or structures containing bodies or remains, other than subterranean graves, shall be located closer than fifty (50) feet to the boundary line of any residential or commercial district.
- R. All cemeteries shall comply with applicable state regulations.

Commented [C7]: The Hayes Township Cemetery Master Plan

9.4 Funeral Home or Mortuary:

Funeral Home or Mortuary property shall have direct vehicular access to a public road. Funeral home or mortuary property shall be at least one hundred fifty (150) feet of lot width. All uses, off-street parking areas, and loading areas are accommodated on site, without encroachment into the setback areas. The service entrance to the building shall be screened from view of adjoining residential properties, or contained within the confines of the building.

9.5 Gasoline / Service Station: (Note: none currently comply)

- S. An automobile service station building, repair garage or main building for a filling station shall be located not less than fifty (50) feet from the road right-of-way or less than twenty-five (25) feet from the side or rear lot line of any adjoining residential property or less than twenty-five (25) feet from the side or rear lot line of adjoining commercial or industrial property.
- T. No ingress or egress to an automobile service station, public garage or filling station, shall be closer than fifty (50) feet from any intersection or residential property line abutting the property on which such facility is located.
- U. All lubrication equipment, hydraulic hoists and pits shall be completely enclosed

Commented [C8]: RX: these words can be deleted and will improve understandability

within a building. All gasoline pumps shall be located not less than twenty-five (25) feet from any lot line, except for adjoining residential property line which shall require a fifty (50) foot setback, and shall be arranged so that motor vehicles may be provided easy egress and ingress to and from the adjoining road, and so that no portion of the vehicle while it is stopped for service, shall overhang onto a sidewalk, curb, road or public right-of-way.

- V. When adjoining residential property, screening at least five (5) feet in height shall be constructed parallel to the property line of such residential property. All masonry walls shall be protected by a fixed curb or other barrier to prevent vehicular contact.
- W. All outside storage areas for trash, used tires, auto parts and similar items shall be enclosed by natural screening at least five (5) feet in height. Outside storage or parking of disabled, wrecked or partially dismantled vehicles shall be allowed for a period not to exceed fifteen (15) days.
- X. All exterior lighting shall comply with **Section TBD Outdoor Lighting** of this Ordinance.
- Y. On a corner lot, both road frontage sides shall conform to all applicable front yard regulations of this ordinance.
- Z. Parking and stacking spaces shall be provided in the rear of the property subject to the **Section TBD Parking and Loading Standards**.

Commented [C9]: RX: Could the time allowance for storage be increased in length were the vehicles screened and obscured by an 8 foot wall (as in 9.6)?

Commented [C10]: RG: Correct Section

9.6 Junk and Salvage Material Storage:

Junk storage and salvage materials shall be located within a completely enclosed building. Any open storage yards or areas shall be entirely enclosed by an obscuring eight (8) foot wall or fence and a vegetative screening, and no salvage yard facilities shall be nearer to the exterior boundary of the Industrial (I-1) District than one-hundred (100) feet.

9.7 Kennels or Veterinary Clinic/Hospital:

- AA. All kennels shall be operated in conformance with County and State regulations and shall be on sites of at least five (5) acres. Veterinary clinics or hospitals shall be located on sites of at least one (1) acre in size.
- BB. Animals shall be confined in a fenced area to preclude their approaching nearer than five hundred (500) feet to any dwelling on adjacent premises or nearer than fifty (50) feet from the property line, whichever is greater.
- CC. Any fenced areas shall be screened from adjacent properties and/or roads with an opaque fence and a vegetated evergreen buffer at least five (5) feet in height.
- DD. The facility shall be so constructed and maintained that odor, dust, noise or drainage shall not constitute a nuisance or hazard to adjoining premises.
- EE. Animals shall be kept in a soundproof building between the hours of 10 p.m. and 8 a.m.
- FF. All principal use activities shall occur within an enclosed main building.

Commented [C11]: RX: buffer, both at least five (5) feet in height.

Commented [C12]: RX: What about dog runs/enclosures? These would be a primary activity of any kennel or veterinary hospital and FF appears to exclude them.

9.8 Manufactured Home Developments:

Manufactured home developments shall be subject to the following conditions:

- GG. Manufactured home developments shall be developed and licensed pursuant to the requirements of the Michigan Manufactured Housing Commission, Public Act 96 of 1987 and any rules promulgated pursuant to this Act, as amended. This includes but is not necessarily limited to compliance with Michigan Manufactured Housing Commission regulations concerning internal roads, parking requirements, fencing, screening, unit spacing and recreational and open spaces.
- HH. To the extent permitted by the Michigan Manufactured Housing Commission, this ordinance shall require all mobile homes in mobile home parks to be anchored to the ground in accordance with the standards and specifications of the manufacturer and any applicable state and federal statutes and rules.
- II. To the extent permitted by the Michigan Manufactured Housing Commission, this ordinance shall require the underside or chassis of all mobile homes in mobile home parks to be fully skirted or enclosed with durable, weather-resistant materials, as specified by the manufacturer or as specifically manufactured for use as home skirting, and all such skirting shall be maintained in place as designed.

Commented [C13]: RG: Should we separate or define mobile homes different from temporary housing- use current regulations

9.9 Mobile Homes and Trailers. Other Uses:

Mobile homes, travel trailers and motor homes may be used as follows:

- JJ. Mobile homes may be used as temporary dwellings until the owner or occupant thereof completes the construction or erection of a conventional housing unit for which a Building Permit has been issued, subject to the conditions of this Ordinance. The temporary dwelling shall be included on the Building Permit, and maintained as long as diligent progress is being made on the main property use, and shall be removed upon issuance of an Occupancy Permit for the main use.
- KK. The unoccupied storage of a motor home or travel trailer, not a mobile home, on any residential property by the owner thereof shall be allowable as a permitted accessory use of the premises where there is a main use, provided such storage is confined to the rear yard when the rear yard is accessible. If the rear yard is not accessible, then storage in the side yard is permissible, As allowed by other sections of this ordinance. The unoccupied storage of a motor home or travel trailer shall comply with the applicable district setbacks.

Commented [C14]: MM: Why are HH and II under Manufactured Home Developments? Shouldn't they be under Mobile Homes and Trailers?

9.10 Motels and Hotels:

- LL. Motels and Hotels shall have a minimum lot width of one hundred fifty (150) feet at the road line.
- MM. There shall be at least eight hundred (800) square feet of lot area per guest room.
- NN. Each unit shall contain at least a bedroom and bath and a minimum gross floor area of two hundred fifty (250) square feet.
- OO. Motels shall provide customary motel services, such as maid service, linen service, telephone and/or desk service, and the use of furniture.
- PP. Parking spaces shall be provided subject to the **Section TBD** *Parking and Loading Standards*.

9.11 Nursing Homes, and Assisted Living Facilities:

Nursing and convalescent homes, medical care facilities and similar uses shall meet the following requirements.

- QQ. The minimum lot size for such facilities shall be five (5) acres unless community water and sewer is available.
- RR. Such uses shall have access via a public road as the main means of access for residents or patients, visitors, and employees shall be via the road.
- SS. Any such facility shall provide a minimum of fifteen hundred (1,500) square feet of outdoor open space for every room used or intended to be used. The open space shall be landscaped and shall include places for walking and sitting. Off- street parking areas, driveways, and accessory uses or areas shall not be counted as required open space.

9.12 Public Buildings, Institutions and Places of Worship:

Public buildings (except public works garages and storage yards), places of worship, public schools, private schools and their local supporting service uses, shall be permitted provided the arrangement of property uses shall minimize the impact on scenic views, and if feasible, the site design shall mitigate negative impacts related to building size, noise, lighting and traffic.

Any uses of church structures or properties for such other purposes as recreation, day care centers, group housing, and the like, shall be separately considered as part of the conditions to granting or denying a special permit in residential districts.

9.13 Recreation Camps:

Recreation camps, recreation lodges and resorts for either profit or non-profit shall be subject to the following conditions:

- TT. The use is established on a minimum site of twenty (20) acres.

- UU. All outdoor activity areas, parking lots, main buildings and accessory buildings are located at least 100 feet from all property lines. The resulting 100 foot yard shall be maintained as a buffer area wherein all natural tree/shrub cover is retained in healthful growing conditions. Planted greenbelts may be required by the Planning Commission as deemed necessary.
- VV. The recreational camp use shall not locate within the confines of a platted subdivision intended for single residential occupancy or parcels which are deemed by the Planning Commission to be a logical extension of such a platted area.

9.14 Recreational Areas and Facilities:

All recreation lands and/or facilities, subject to findings that the uses are compatible with the surrounding residential area, the uses respect the environmental qualities of the site, noises typical residential areas and no inordinate obstructions to scenic views are established. Recreational uses permitted herein include parks, playgrounds, and common access sites.

Commented [C15]: RX: the noises generated commensurate with typical residential areas.

Commented [C16]: RX: and that no inordinate

9.15 Resource Mining, Extraction and Fill

The location of mining and extractive operations are dependent in large part, upon the sites which contain natural deposits of material having economic value, particularly to the construction industry. Sites nearest to the built-up areas are generally more viable economically, but they could be more sensitive environmentally, because of their close proximity to homes and smaller building sites. The treatment of extractive operations as a special use (conditional) is necessary to build in the flexibility needed to permit these activities where the resources are found, and at the same time, to afford protection to adjoining properties. Public agencies, government units, and private operations are subject to these regulations.

Commented [C17]: RX: insert at end of sentence "which rely on the quiet enjoyment of their property."

WW. Site Plan Requirements

Site plans for Special Use Permits shall be submitted in accordance with the site plan requirements of Section TBD and in addition shall show:

- 1) Proposed location, area, boundaries and depth of excavation or fill.
- 2) Pertinent time schedules for starting and concluding dates of the proposed operation per permit.
- 3) Location of spoils dumps, sediment basins, earth stockpiles, machinery, or fuel or hazardous waste, material storage buildings, or tanks.
- 4) Roads to be used by any hauling equipment and all planned ingress/egress points to the excavated area, stockpiled resources, and on-site equipment.
- 5) A statement on general surface and ground water conditions, including source flow, size and location of watershed and wetlands, and any possible impact on permanent bodies of water, water levels and wells in the area. If the operation plans to enter the aquifer a hydro-geological report shall be required.
- 6) A statement outlining the type of material to be extracted or deposited, the type of mining operation and processing equipment to be used and measures to control noise, air and water pollution, run-off/erosion and any

Commented [C18]: MM: Sites nearest to built up areas should be considered only if special local needs require the materials. It is very difficult to protect the ground water, run off and air near these extraction sites (need more specifics) I think its possible that all Level 2 proposed mining and extraction should be prohibited from most Hayes TWP

steps to relieve any adverse effects to adjoining properties and the environment. An Emergency Plan for any accidental chemical, or other industrial spill, shall also be included.

- 7) Plans and statements outlining all work to be done on the reclamation, assuring that steps are taken to blend the site into the surrounding landscape or neighborhood as applicable.
- 8) The Planning Commission may accept the documents required for permits under Act 451, of 1994, being Sections 9101 to 9123, of the Soil Erosion and Sedimentation Control of the Natural Resource and Environmental Protection Act, provided, the terms, standards, and review requirements of the Zoning Ordinance are complied with. There shall be compliance with all applicable federal or state regulations. If a federal or state permit is required, then the Special Use Permit shall not be issued or shall not become effective until the federal or state permit has been issued.
- 9) Permits shall contain the full extent of the operation as specified in each Permit, and any deviation or enlargement of the scope of operation shall require a separate permit.
- 10) The map scale of the site plan shall be sufficient to show the site operating details as required by each Permit. The site plan and special use application shall be reviewed and decided pursuant to Section TBD. The Special Use Permit shall be issued unless the Planning Commission finds after applying the criteria of Section 6.03 that serious consequences are likely to result to the health, safety and welfare of the township, its citizens or the environment from the issuance of the Special Use Permit.

Commented [C19]: RX: all work and associated financing

Commented [C20]: RX: serious adverse consequences (Delete "are likely to result.")

Commented [C21]: RX: are likely to result.

XX. Site Plan Review Levels Required

The site plan review procedures required for an extraction/fill site will vary with the scope, extent and complexity of the proposed operation. The following site plan review levels shall apply:

- 1) LEVEL 1 - No Site Plan Review or Permit shall be required if the subject property is not waterfront property or a distance established by the soil erosion department, and provided all of the following apply:
 - a) The intended fill/extraction is for earth materials to be used on the same parcel, by tax description.
 - b) The operation involves minor or incidental earth work in connection with a residential building construction, residential site improvements including driveways or agriculture project, i.e. berm, regraded slopes, retention ponds, and/or similar work.
 - c) The fill/extraction operation will not involve more than 200 cubic yards of topsoil, sand, clay, gravel and/or similar material.
- 2) LEVEL 2 - Site Plan approval by the Planning Commission shall be required if:
 - a) Intended or projected extraction/fill sites and any sites other than those included in Level 1.
 - b) Operations expected to include long term access to stockpiled resources.
 - c) On-site processing machinery, batch plant and other equipment that will be used.

YY. Performance Standards

The following shall apply to all proposed extraction, mining, fill operations:

- 1) All excavations or extractive work shall maintain a minimum perimeter setback of fifty (50) feet from road right-of-way and all property lines. The minimum perimeter setback may be increased up to 100 feet to compensate for (a) that portion of any boundary contiguous to lands zoned "residential" and/or occupied for residential purposes, or (b) the maximum recorded (IGLD) high water level of Lake Charlevoix and Lake Michigan or (c) any lake, stream, or creek within the Township. Controlled work in the fifty (50) or one hundred (100) feet setback area may be permitted if spoils, over burden, or other earth fill material replaces the resources removed, or if contouring or landscaping is an improvement to this process, as the work progresses (in cases of a pit).
- 2) The working face of an excavation shall maintain slope angles sufficient to prevent erosion or earth disturbances of any kind to adjoining properties.
- 3) Upon completion of the mining operation, or each phase of the project, the entire project shall be restored consistent with the original vegetation and top soil cover and in accordance with Farm Services Agency of U.S.D.A. recommendations. Sufficient native topsoil must be kept on the site as a ready resource to be used in reclamation work unless a guaranteed replacement plan is approved.
- 4) Any open mining face which is higher than three feet (3') shall have fencing placed on the top of the same in such manner as to guard against persons from falling over the working face. Such fencing shall be at least four feet (4') high, and shall consist of at least a woven wire farm fence. In addition berm, walls, and visual screening devices may be required, if necessary, to protect adjoining properties and/or persons in the vicinity of the site. Factors of safety and aesthetics shall be addressed.
- 5) The operation of mechanical equipment of any kind shall be limited by the day and/or the hour if the site is in a location that directly impacts homes, by creating an operating nuisance.
- 6) All structures, equipment, and machinery of any kind shall be considered temporary and shall be removed from the site upon completion of the terms of the Special Use Permit. This item shall not apply to industrially zoned sites.
- 7) Air pollution, noise, vibration, and safety factors shall be controlled within the limits governed by State and/or Federal regulations applicable to the facility.
- 8) If necessary to protect the area, access routes serving the site may be limited as stated on the permit or as illustrated on the site plan, it being the intent to minimize the exposure of residential streets to earth moving vehicles.
- 9) The location of earth stockpiles, machinery, equipment, and any buildings or fuel or hazardous material storage or containment structure, shall be approved by Permit but only in terms to protect adjoining properties, and obtain the optimum use of the site. Topography, vegetation, screening devices, refueling tanks or vehicles and physical isolation from residential properties shall be considered in locating site facilities and earth stockpiles.

Commented [C22]: RX: State, County and Federal

Commented [C23]: RX: I like the wording of this paragraph. We should consider using elsewhere in ZO when appropriate.

Commented [C24]: RX and to obtain

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ZZ. Site Reclamation

The final grading and land reclamation plan for each permitted excavation shall be in general accordance with the character of uses and natural features on adjoining lands to the extent practical. Excavations shall be finished with evenly contoured grades to blend in with the adjoining terrain. In Residential Districts, the final grade of an excavation may be required to be brought to a level to permit future residential development.

- 1) Reclamation and rehabilitation of mined areas shall be accomplished as soon as practical following the mining or excavation of an area. Where possible, such rehabilitation and reclamation shall be accomplished concurrently with the mining or excavation operations. An alternate reclamation plan may be filed for cases where continuous reclamation is not practiced or feasible, and a surety bond is provided therewith. A time table for the reclamation and rehabilitation of mined areas shall be agreed upon at the time of a permit being issued.
- 2) Excavations which encounter groundwater or trap surface water, shall be treated in one or more of the following, as applicable to a particular situation:
 - a) Stagnant water conditions shall not be permitted to continue and back filling with approved materials may be required.
 - b) Where water is to remain, either by planned re-use or because no other option exists, the depth shall be sufficient to avoid stagnation, and the shoreline and bottom-land grade shall be uniform at one foot vertical to four feet horizontal (1:4) to a minimum distance of twenty (20) feet from the shoreline. The water depth shall be posted.
 - c) Depending on the nearness of residential neighborhoods, and access by children, the created water body shall be required to erect a safety fence four feet high consisting of at least a woven wire farm fence, posted for no trespassing, or similar safety precautions deemed appropriate for the site.
- 3) The final banks of all excavations shall be sloped at a grade which is not steeper than one (1) foot vertical to three (3) feet horizontal (1:3) from the top to the pit bottom, or otherwise be established to blend in with the adjacent terrain and/or stabilize at the soils natural angle of repose.
- 4) The original topsoil from the site shall be retained and replaced on excavated areas not covered by water, except where streets, beaches, or other planned improvements are desired.
- 5) Vegetation shall be required to be restored by seeding of grasses or sodding and/or the planting of trees and shrubs.
- 6) Upon cessation of mining operations, and within a reasonable period of time not to exceed twelve (12) months thereafter, all plant structures, buildings, and equipment shall be removed, except for that necessary to manage on-site stockpiled materials. On site stockpiled materials shall be removed within twenty four (24) months of the cessation of the mining operations. This does not preclude a re-start at another time upon permit renewal.

Commented [C25]: RX: practicable?

Specific site reclamation requirements may vary somewhat depending on the location of the site in terms of its exposure to view, physical isolation, influence on residential areas, sensitivity to the natural environment and/or re-use potential

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(or plan). The Planning Commission shall rule on such variations with reasons stated.

AAA. Performance Guarantees

In those instances where a resource excavation/fill operation entails extensive reclamation work and/or safety precautions, financial guarantees or assurances as prescribed in Section 9.06 of the Zoning Ordinance may be required as a condition to issuing a Special Use Permit under the terms of this Ordinance.

The Planning Commission may substitute a staged or phased excavation program wherein performance on reclamation shall be substantially completed prior to undertaking the next phase.

Commented [C26]: RX: substitute and mandate a staged

9.16 Sanitary Landfill:

All sanitary landfill operations shall comply with standards prescribed by applicable State and County health regulations.

9.17 Sawmills and other Mills:

Sawmills, planing mills, veneer mills and accessory or incidental mill operations involving logs, "unprocessed timber" and/or rough sawn lumber, are permitted provided:

BBB. The use involves the processing of raw timber and/or rough lumber and shall not include hardware supplies, paints, or retail lumberyard businesses except on-site milled lumber may be sold. Log and lumber storage uses are permissible accessory uses.

Commented [C27]: RX: Clumsy wording, needs work

CCC. The land area of the mill site shall be at least ten (10) acres.

Commented [C28]: MM: 5 acres

DDD. Structures housing mechanical wood cutting devices (head saws, cut-off saws, planers, lathers, etc.), shall not be located closer to an off-premises residence than one hundred (100) feet.

EEE. Log storage and sawn timber or lumber shall not be located nearer than one hundred (100) feet from an off-premises unless secured by fencing or other means but in no case closer than established setbacks.

Commented [C29]: RX: obscured?

FFF. The location of a proposed mill is determined by the Planning Commission to be compatible with other uses in the general vicinity taking into account traffic flow, noise, scenic values, and residential environments where applicable and Township Community Master Plan for the area. The mill location shall be determined to be good land use.

In considering applications for forest industries the Planning Commission may permit modifications to the standards in items A through E, where owing to natural or man-made conditions, no good purpose would be served by requiring strict compliance. Such conditions may include, but need not be limited to, steep topography, intensely wooded areas, other natural barriers, existing uses, and the like.

Nothing in this Ordinance shall be interpreted to exclude temporary and itinerant sawmill operations on property where the timber harvesting involves only those resources found

on the same property. No permit shall be required where the operation involves a period of less than six (6) months on the same property or zoning lot.

9.18 Sexually Oriented Business Can this section be condensed

Commented [C30]: RX: Agreed it would be nice. But is it mandated legally to be this way?

The purpose and intent of the section of this Ordinance pertaining to the regulation of sexually oriented businesses is to regulate the location and operation of, but not to exclude, sexually oriented businesses within the Township, and to minimize their negative secondary effects. It is recognized that sexually oriented businesses, because of their very nature, have serious objectionable operational characteristics which cause negative secondary effects upon nearby residential, educational, religious, and other similar public and private uses. The regulation of sexually oriented businesses is necessary to ensure that their negative secondary effects will not contribute to the blighting and downgrading of surrounding areas and will not negatively impact the health, safety, and general welfare of Township residents. The provisions of this Ordinance are not intended to offend the guarantees of the First Amendment to the United States Constitution or to deny adults access to sexually oriented businesses and their products, or to deny sexually oriented businesses access to their intended market. Neither is it the intent of this Ordinance to legitimize activities which are prohibited by Township ordinance, state or federal law. If any portion of this Ordinance relating to the regulation of sexually oriented businesses or referenced in those sections is found to be invalid or unconstitutional by a court of competent jurisdiction, the Township intends said portion to be disregarded, reduced, and/or revised so as to be recognized to the fullest extent possible by law. The Township further states that it would have passed and adopted what remains of any portion of this Ordinance relating to regulation of sexually oriented businesses following the removal, reduction, or revision of any portion so found to be invalid or unconstitutional.

- GGG. No sexually oriented business shall be permitted in a location in which any principal or accessory structure, including signs, is within one thousand (1,000) feet of any principal or accessory structure of another sexually oriented business.
- HHH. No sexually oriented business shall be established on a parcel which is within one thousand (1,000) feet of residentially zoned parcel (R-1, R-2, R-3, R-4, R-5, RR).
- III. No sexually oriented business shall be established on a parcel within five hundred (500) feet of any residence.
- JJJ. The proposed use shall conform to all specific density and setback regulations, etc. of the zoning district in which it is located.
- KKK. The proposed use must meet all applicable written and duly promulgated standards of Hayes Township and other governments or governmental agencies having jurisdiction, and that to the extent required, the approval of these governments and/or governmental agencies has been obtained or is reasonably assured.
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LLL. The outdoor storage of garbage and refuse shall be contained, screened from view and located so as not to be visible from neighboring properties or adjacent roadways.

MMM. Any sign or signs proposed for the sexually oriented business must comply with the provisions of this Ordinance, and shall not otherwise include photographs, silhouettes, drawings, or pictorial representations of any type, or include animated or flashing illumination.

NNN. Entrances to the proposed sexually oriented business must be posted on both the exterior and interior walls, in a location clearly visible to those entering and exiting the business, and using lettering no less than two (2) inches in height that:
1) "persons under the age of 18 are not permitted to enter the premises", and 2) "No alcoholic beverages of any type are permitted within the premises unless specifically allowed pursuant to a license duly issued by the Michigan Liquor Control Commission."

OOO. No product or service for sale or gift, or any picture or other representation of any product or service or gift, shall be displayed so as to be visible from the nearest adjoining roadway or a neighboring property.

PPP. Hours of operation shall be limited to 12:00 PM (noon) to 12:00 AM. (Midnight)

QQQ. Any booth, room, or cubicle available in any sexually oriented business, excepting an adult motel, used by patrons for the viewing of any entertainment characterized by the showing of Specified Anatomical Areas or Specified Sexual Activities:

- 1) Shall be handicap accessible to the extent required by the Americans With Disabilities Act;
- 2) Shall be unobstructed by any door, lock, or other entrance and exit control device;
- 3) Has at least one side totally open to a public, lighted aisle so that there is an unobstructed view at all times from the adjoining aisle of any occupant;
- 4) Is illuminated by a light bulb of wattage of no less than 25 watts;
- 5) Has no holes or openings in any side or rear walls.

RRR. Review Procedures for Sexually Oriented Businesses

The Planning Commission shall adhere to the following procedures when reviewing a special approval application for a sexually oriented business.

- 1) If the Zoning Administrator or Planning Commission determine that a special approval application for a sexually oriented business is not complete when it is first presented to the Planning Commission, it shall provide written notice by first class mail within five (5) business days of said determination detailing the items required to complete the application. Upon payment of a new filing fee, the applicant may resubmit the amended application for review by the Planning Commission for completeness.
 - 2) If the Planning Commission determines that the application is complete, it shall within sixty (60) days of said determination make and adopt specific
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findings with respect to whether the proposed sexually oriented business is in compliance with the standards designated in **Section TBD**. If the Planning Commission has not made and adopted findings of fact with respect to a proposed sexually oriented business and either approved or denied the issuance of a special approval for the same within sixty (60) days of its determination that a completed application has been filed, then the special approval shall be deemed to have been approved.

- 3) Prompt judicial review of adverse determination: If the Planning Commission denies a special approval application for a sexually oriented business pursuant to the above paragraphs, then the applicant shall be entitled to prompt judicial review by submitting a written request to the Zoning Administrator. The Township shall have within five (5) business days of the receipt of such written notice to do the following:
- a) File a petition in the Circuit Court for the County seeking a judicial determination with respect to the validity of such denial, and in conjunction therewith, apply for a preliminary and permanent injunction restraining the applicant from operating the sexually oriented business in violation of the Township Zoning Ordinance;
 - b) Request that the application for issuance of a preliminary injunction be set for a show-cause hearing within ten (10) business days or as soon thereafter as is possible after the filing of such petition. In the event the applicant appears at or before the time of such show-cause hearing, waives the notice otherwise provided by Michigan Court Rules, and requests that at the time set for such hearing the Court proceed to hear the case under applicable rules of civil procedure for the issuance of such permanent injunction on its merits, the Township shall be required to waive its application for preliminary injunction and shall join in such request.

In the event that the applicant does not waive notice and/or does not request any early hearing on the Township's application for permanent injunction, it shall never the less be the duty of the Township to seek the earliest possible hearing date under Michigan law and the Michigan Court Rules.

The filing of written notice of intent to contest the Planning Commission's denial of a special approval shall not in any way affect the validity of such denial, but such denial shall be deemed invalid and the special approval application automatically approved if, within fifteen (15) business days of the filing of the Township's petition, a show-cause hearing has not been scheduled.

9.19 Storage Facilities:

SSS. Storage uses as allowed in Industrial (I-1), including mini-storage, shall meet the following regulations:

- 1) All proposed storage buildings nearest to the primary access road shall be site planned to be perpendicular to the road; landscape screening
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- shall be required by the Planning Commission per subparagraph 3) of this section.
- 2) Proposed storage buildings are positioned to the rear of other approved non-storage or non-warehousing buildings, e.g., retail or office uses, or, the storage buildings are set back at least one hundred (100) feet from public road right-of-way lines.
 - 3) Effective year-round landscape screening is required to shield storage buildings from bordering public roads upon installation of proposed plant materials.
 - 4) Nothing in this section shall prohibit or inhibit storage space as a necessary accessory use to any principal commercial use of the property, and these standards do not apply to internal roads within a planned industrial or commercial park.
 - 5) Storage facilities for building materials, sand, gravel, stone, lumber, storage of contractor's equipment and supplies, shall be within an enclosed building or behind an obscuring wall or fence on those sides abutting any Residential District and on any yard abutting a public thoroughfare.

9.20 Telecommunication Tower or Alternate Tower Structure

TTT. Purpose

The purpose of this Section is to establish general guidelines for the location of wireless telecommunication towers, alternative tower structures and antennas. The Township recognizes that it is in the public interest to permit the location of wireless telecommunication towers, alternative tower structures and antennas within the Township. The Township also recognizes the need to protect the scenic beauty of Hayes Township from unnecessary and unreasonable visual interference, and that wireless telecommunication towers, alternative tower structures and antennas may have negative aesthetic impacts upon adjoining and neighboring uses. As such, this Section seeks to:

- 1) Protect residential areas from potential adverse impact of towers and antennas;
- 2) Encourage the location of towers in nonresidential areas;
- 3) Minimize the total number of towers throughout the community;
- 4) Encourage the joint use of new and existing tower sites rather than the construction of additional towers;
- 5) Encourage developers of towers and antennas to configure them in a way that minimizes their adverse visual impact;
- 6) Enhance the ability of providers of telecommunication services to provide such services to the community quickly, effectively, and efficiently;
- 7) Consider the public health and safety issues of telecommunication towers and alternative tower structures; and
- 8) Avoid potential damage to adjacent property from tower failure.

UUU. Additional Standards for Telecommunication Tower or Alternative Tower Structure. In addition to the standards set forth in a particular zone and the standards set forth in Articles V and VI of this Ordinance, the uses below must meet the following additional standards:

- 1) Application Requirements. The following information shall be provided in support of an application to construct a wireless telecommunication tower:
 - a) Certification from a Michigan licensed professional engineer as to the manner in which the proposed wireless telecommunication tower is designed to collapse, and that the proposed tower, as built, will withstand, at a minimum, winds of 70 miles per hour with one half inch of radial ice on the tower.
 - b) A map depicting the existing and known proposed location of wireless telecommunications facilities, including wireless telecommunication antenna attached to alternative tower structures, within Hayes Township as well as within the proposed service area radius.
 - c) The name, address, and telephone number of the person to contact regarding site maintenance or other notification purposes. This information shall be periodically updated by the tower owner.
 - d) A statement which indicates the applicant's intent to allow the collocation of other antenna, provided that the cost of modifying the existing tower is borne by the co-locating entity and reasonable compensation is paid by the co-locating entity.

- 2) Evidentiary Requirements. The applicant must demonstrate that no existing tower, alternative tower structure or alternative technology not requiring the use of towers or alternative tower structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Hayes Township Planning Commission related to the availability of suitable existing towers, other alternative towers or alternative technology. Evidence submitted to demonstrate that no existing tower, alternate tower structure or alternative technology can accommodate the applicant's proposed antenna shall consist of all of the following:
 - a) No existing tower or alternative tower structure is located within the geographic area which meets applicant's engineering requirements.
 - b) Existing towers or alternative tower structures are not of sufficient height to meet applicant's engineering requirements.
 - c) Existing towers or alternative tower structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - d) The applicants proposed antenna would cause electromagnetic interference with the antenna on the existing towers or alternative tower structures, or the antenna on the existing towers or alternative tower structures would cause interference with the applicants proposed antenna.
 - e) The fees, costs or contractual provisions required by the owner in order to share an existing tower or alternative tower structure or to adapt an existing tower or alternative tower structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - f) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
 - g) The applicant demonstrates that an alternative technology that

does not require the use of towers or alternative tower structures, such as cable microcell network using multiple low-powered transmitters or receivers attached to a wireline system is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

- 3) Setbacks. The following setback requirement shall apply to all towers for which a special use permit is required:
 - a) Towers must be set back a distance equal to at least one hundred percent (100%) of the height of the tower from any adjoining lot line.
 - b) Guys and accessory buildings must satisfy the minimum zoning district setback requirements.
- 4) Security Fencing. Towers and attendant accessory structures shall be enclosed by security fencing not less than six feet (6') in height and shall also be equipped with an appropriate anti-climbing device.
- 5) Landscaping. The following requirements shall govern the landscaping surrounding towers for which a special use permit is required:
 - a) Tower facilities shall be landscaped with a buffer of plant materials that effectively screen the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4') wide outside the perimeter of the compound.
 - b) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.
 - c) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.
- 6) State or Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations re changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- 7) Aesthetics. Towers and antennas shall meet the following requirements:
 - a) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

Commented [C31]: RX: Guys, their associated foundations, structures

- b) At a tower 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.
 - c) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
 - d) Where a feasible alternative exists, towers, 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 at 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.
 - e) The tower is of monopole or lattice design.
- 8) Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- 9) Compliance with Codes. Antenna and metal towers 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 towers published by the Electronic Industries Association, as amended from time to time.
- 10) Interference with Residential Reception. Transmission shall not interfere with television and radio reception to neighboring residential areas.
- 11) Signs. No signs other than signs required pursuant to federal, state, or local law or ordinance shall be allowed on an antenna or tower. A sign will be placed on the fence indicating the ownership of the tower and a telephone number of who to contact in case of an emergency. The name and telephone number must be 50 point print.
- 12) Spacing. A tower shall not be located within two hundred feet (200') or three hundred percent (300%) of the height of the tower, whichever is greater, of an existing 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 tower structure to the base of the single family or multiple family dwelling unit, church, school or other structure normally used and actually used for the congregation of persons.
- 13) Removal of Abandoned Antennas and Towers. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall

Commented [C32]: RX: insert "cellular telephone"

remove the same within ninety (90) days of receipt of notice from the Township notifying the owner of such abandonment. Along with said removal, said owner shall restore the site of said antenna or tower to its original condition prior to location of the antenna or tower subject to reasonable wear and tear. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds to remove the tower or antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower. The Planning Commission may require the applicant to file a bond equal to the reasonable cost of removing the tower, antenna, alternative tower structure or other supporting structure(s) as a condition of a special use permit given pursuant to this section.

- 14) Limitation on Tower Height. No tower shall be constructed which is greater than 199.5 feet in height as measured from the point where the tower meets the earth to the highest point of the tower structure, including antenna. The restrictions in the building height definition of Section 2.02 do not apply to these towers.

9.21 Wind Turbine Generators

Commercial wind turbine generators and anemometer towers shall be permitted in the CR, A, C-2, and I-1 districts pursuant to a special use permit obtained following the procedures of Article TBD of this Ordinance and the requirements of this subsection.

VVV. Application Requirements

In addition to the application requirements of Article TBD of this Ordinance, an application for a special use permit for a commercial wind turbine generator or for an anemometer tower shall include all of the following information, unless expressly indicated otherwise. If the zoning administrator determines that all required information was not supplied, he or she shall send written notification to the Applicant of the deficiencies. The application for the wind turbine generator or anemometer tower shall not proceed until all required information has been supplied.

- 1) A site plan meeting all of the requirements of Article TBD of this Ordinance.
 - 2) A detailed analysis by a qualified registered engineer describing the specific commercial wind turbine generator structure(s) or anemometer tower proposed and all phases for implementing the development, if any.
 - 3) A study prepared by a qualified registered engineer documenting that the site of the commercial wind turbine generator has sufficient wind resources for the proposed wind turbine generator equipment. Provided, however, this application requirement shall not apply to an anemometer tower.
 - 4) A resume or other written summary of the education, experience, and other qualifications of all experts providing information concerning the commercial wind turbine generator or anemometer tower project.
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- 5) A detailed written statement, with supporting evidence, demonstrating how the proposed commercial wind turbine generator or anemometer tower will comply with all of the applicable standards for approval specified in this Ordinance.
- 6) Written documentation establishing whether the location of a proposed commercial wind turbine generator on the site will create shadow flicker on any existing structures located off the property on which the wind turbine generator will be constructed, and if so, the extent and duration of the shadow flicker on these existing structures and neighboring properties, and the steps to be taken to minimize the shadow flicker on these existing structures. Provided, however, this application requirement shall not apply to an anemometer tower.
- 7) Written documentation that the applicant has notified the FAA and any other applicable state and federal regulatory agencies of the proposed commercial wind turbine generator or anemometer tower.
- 8) Written documentation that the applicant has notified the operators of any microwave or communication link towers or similar facilities of a proposed commercial wind turbine generator when the proposed location of the wind turbine generator is within the line of sight between two or more microwave or communication link towers or similar facilities. Provided, however, this application requirement shall not apply to an anemometer tower.
- 9) Elevation drawings, computer generated photographic simulations or other images, or other visual aids that depict how the commercial wind turbine generator tower and all accessory structures or anemometer tower will appear as constructed on the proposed site from vantage points north, south, east, and west of the commercial wind turbine generator tower or anemometer tower. Provided, however, this application requirement shall not apply to an anemometer tower.
- 10) Any additional information reasonably deemed necessary by the Planning Commission to determine compliance with the standards for approving a commercial wind turbine generator or an anemometer tower specified in this Ordinance and the impact of the proposed wind turbine generator or anemometer tower on adjacent properties, public infrastructure, and the township as a whole. This information may take the form of, but is not limited to, traffic impact analyses, environmental impact assessments, and/or information from officials representing federal, state, or county departments or regulatory agencies.

WWW. Standards for Approval of Wind Turbine Generators and Anemometer Towers

The Planning Commission shall approve, or approve with conditions, an application for a commercial wind turbine generator or for an anemometer tower only upon a finding that the proposed wind turbine generator or anemometer tower complies with the standards contained in Section **TBD** of this Ordinance and all of the following applicable standards:

- 1) Sufficient Wind Resources. The proposed site shall have documented annual wind resources sufficient for the operation of the proposed wind turbine generator; provided, however, this standard shall not apply to an anemometer tower. No commercial wind turbine generator shall be approved without submission of a wind resource study documenting wind resources on the site over a minimum of one year.
- 2) Minimum Site Area.
The minimum site area for a commercial wind turbine generator or an anemometer tower erected prior to a wind turbine generator shall be as necessary to meet required setbacks and any other standards of this ordinance.
- 3) Setbacks. Each proposed commercial wind turbine generator or anemometer tower shall meet the following applicable setback requirements:
 - a) Each commercial wind turbine generator shall be setback from any adjoining lot line and any adjoining public or private road right-of-way or easement a distance equal to 1,500 feet. The setback shall be measured from the outermost point on the base of the wind turbine generator. The Planning Commission shall reduce this setback to the shortest distance, not less than 735 feet, where the proposed commercial wind turbine generator meets standards 6), 7), and 8) below.
 - b) Each anemometer tower shall be setback from any adjoining lot line and any adjoining public or private road right-of-way or easement a distance equal to the height of the anemometer tower. The setback shall be measured from the outermost point on the base of the anemometer tower.
 - c) For any newly proposed commercial wind turbine generator a wind access buffer equal to a minimum of five (5) rotor diameters shall be observed from any existing off-site wind turbine generator tower.
- 4) Maximum Height.
 - a) The maximum commercial wind turbine generator tower height or the height of an anemometer tower erected prior to a commercial wind turbine generator shall be 300 feet.
 - b) The Planning Commission may approve an increased height for a commercial wind turbine generator tower or an anemometer tower, not to exceed 400 feet, if all of the following conditions are met:
 - (i) The need for the increased height is the result of a stand of trees, existing land forms, or structures that would

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substantially hinder the operation of the commercial wind turbine at the normal height limitation.

- (ii) The increased height is the minimum necessary to achieve a reasonable rate of return on the operation of the commercial wind turbine generator given the documented wind speeds and other site conditions. A reasonable rate of return is not equivalent to maximizing economic return to the operator. The Planning Commission shall not grant the increased height if economic return is not met due to the use of inefficient equipment that does not utilize current commercial technologies.
 - (iii) The increased height will not result in increased intensity on lighting of the tower due to FAA requirements.
- 5) Minimum Rotor Wind Vane or Blade Clearance. The lowest point of the arc created by rotating wind vanes or blades shall be fifty (50) feet on a commercial wind turbine generator. Additional clearance may be required by the Planning Commission if potential safety concerns are identified.
 - 6) Maximum Noise Levels. Any proposed wind turbine generator shall produce sound levels that are no more than fifty (50) decibels as measured on the dB(A) scale at the property lines of the site in question. Provided, however, this standard shall not apply to an anemometer tower.
 - 7) Maximum Vibrations. Any proposed wind turbine generator shall not produce vibrations beyond the property lines of the site in question of such intensity, duration, frequency or character which annoy, disturb, or cause or tend to cause adverse psychological or physiological effects on any reasonable person of normal sensitiveness. Provided, however, this standard shall not apply to an anemometer tower.
 - 8) Blade Throw. The potential blade and ice throw from any commercial wind turbine generator shall not cross the property lines of the site in question. Provided, however, this standard shall not apply to an anemometer tower.
 - 9) Rotational Controls. All commercial wind turbine generators shall be equipped with controls to limit the rotational speed of the blades within design limits for the specific wind turbine generator. Provided, however, this standard shall not apply to an anemometer tower.
 - 10) Transmission Lines. The on-site electrical transmission lines connecting the commercial wind turbine generator to a public utility electricity distribution system shall be located underground. Provided, however, this standard shall not apply to an anemometer tower.
 - 11) Interference with Residential Reception. All commercial wind turbine generators and any anemometer tower shall be constructed and operated so that it does not interfere with television, radio, or microwave reception

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in neighboring areas. If degradation of television, radio, or microwave reception occurs as the result of the wind turbine generator or anemometer tower, the developer shall pay to correct the television, radio, or microwave reception.

- 12) State or Federal Requirements. All commercial wind turbine generators and any anemometer tower shall meet or exceed any standards and regulations of the FAA, the Michigan Public Service Commission, National Electric Safety Code, and any other agency of the state or federal government with the authority to regulate wind turbine generators or other tall structures in effect at the time the special use permit is approved.
 - 13) Aesthetics and Lighting. All commercial wind turbine generators and any anemometer tower shall meet the following requirements:
 - a) The wind turbine generator or anemometer tower shall, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness. Excessively bright or neon colors are not acceptable. The Planning Commission, however, may approve an alternate color if the wind turbine generator or anemometer tower is located within an avian migratory route or if an alternate color would otherwise benefit the neighborhood.
 - b) A commercial wind turbine generator shall be a monopole or monotube style construction (as distinguished from a lattice-style tower) and shall not utilize guy wires. A temporary anemometer tower (to be removed within three years) may utilize a lattice-style tower and/or may utilize guy wires. Safety marking and/or physical barriers for all guy wires anchors may be required by the Planning Commission. Any anemometer tower which is to remain for greater than three (3) years shall be monopole or monotube style construction (as distinguished from a lattice-style tower) and shall not utilize guy wires.
 - c) Commercial wind turbine generator or anemometer tower shall not be artificially lighted unless required by the FAA. Where the FAA requires lighting, the lighting shall be the lowest intensity allowable under FAA regulations, the fixtures shall be shielded and directed to the greatest extent possible to minimize glare and visibility from the ground, and no strobe lighting shall be permitted, unless expressly required by the FAA. Unless the FAA requires otherwise, the lighting shall be a nonpulsating or nonblinking red light.
 - d) Each wind turbine generator or anemometer tower shall be sited on the property in a location that reduces to the maximum extent possible any adverse impacts on significant view corridors from adjacent properties, while at the same time maintaining contact with economically viable wind resources.
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- e) Each commercial wind turbine generator or an anemometer tower shall have no advertising painted on or attached to the tower or any other structure of the wind turbine generator.
- f) Each wind turbine generator tower shall be designed to aesthetically complement the color and design of any existing wind turbine generator tower within a one-mile radius. The Planning Commission may require design changes in order to lessen the visual clutter associated with the siting of multiple wind turbines with non-complementary, inconsistent design within sight of each other.
- 14) Sign. A commercial wind turbine generator or anemometer tower shall have posted on the site in a visible, easily accessible location a sign no more than four (4) square feet in area displaying an address and telephone number for emergency calls. The emergency telephone number shall allow a caller to contact a responsible individual to address emergencies at any time during or after regular business hours and on weekends or holidays. Provided, however, this standard shall not apply to a noncommercial wind turbine generator.
- 15) Access limitation. The commercial wind turbine generator or anemometer tower shall be designed and constructed in such a manner that access is limited, to the extent possible, to authorized personnel only. Provided, however, this standard shall not apply to a noncommercial wind turbine generator.
- 16) Shadow Flicker. All commercial wind turbine shall be designed and sited in such a manner to minimize shadow flicker expected to fall on a roadway and on any existing structures located off the property on which the wind turbine generator is constructed. Provided, however, this standard shall not apply to an anemometer tower.
- 17) Removal of Abandoned or Unsafe Wind Turbine Generators or Anemometer Towers. Any wind turbine generator or anemometer tower that is not mechanically capable of operating for more than 4,380 hours over any twelve (12) month period or sits idle for more than 12 months shall be considered abandoned. Any tower found to be unsafe or not in compliance with the special land use conditions related to noise or shadow flicker placed upon it by the Planning Commission, shall be found to be in violation of the special land use permit. The owner of any wind turbine generator tower or anemometer tower that is abandoned or in violation of the special land use permit shall remove the same within ninety (90) days of receipt of notice from the Township of such abandonment or violation. In addition to removing the wind turbine generator, or anemometer tower, the owner shall restore the site of the wind turbine generator or anemometer tower to its original condition prior to location of the wind turbine generator or anemometer tower, subject to reasonable wear and tear. Any foundation associated with a wind turbine generator or anemometer tower shall be removed to a minimum depth of four (4) feet below the final grade, the location of the remaining

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foundation shall be recorded with the Charlevoix County Register of Deeds and site vegetation shall be restored. Failure to remove an abandoned wind turbine generator or anemometer tower within the ninety (90) day period provided in this subsection shall be grounds for the Township to remove the wind turbine generator or anemometer tower at the owner's expense.

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Article X: Zoning Board of Appeals

SECTION 10.01 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 purposes of this Ordinance as set forth in Section **TBD** shall be observed. 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 10.02 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 10.03 JURISDICTION

1. Except for Planning Commission decisions concerning special use permits, and Planned Unit Developments *and shoreland landscaping plans*¹, 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 TBD** 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.

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SECTION 10.04 EXERCISING POWER

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 10.05 APPLICATION REQUIREMENTS

The applicant shall submit, *with the associated fee*, seven (7) copies of a completed application, surveys, plans and data as required in **Article TBD**: Site Plan Review, *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 10.06 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.²

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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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 10.07 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 *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.

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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 10.08 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 TBD of this Ordinance.

SECTION 10.09 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 10.10 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 TBD of this Ordinance.

SECTION 10.11 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.

