

# *Village of Empire*

## *Zoning Ordinance*

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# Village of Empire Zoning Ordinance

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## **Article 1: Short Title and Purpose**

### **Preamble**

An Ordinance to provide for the establishment of Zoning Districts to encourage and regulate the use of land and proper location of buildings and structures for residence, trade, industry, or other purposes; to regulate dimensions of yards, and other spaces; to provide for the administration, enforcement, penalties for violation, and amendment of this ordinance. Nothing herein shall relieve any property owner or applicant from complying with all applicable local ordinances, and state and federal regulations.

#### **The Village of Empire ordains:**

##### **Section 1.01 - Title**

This Ordinance shall be known as the Village of Empire Zoning Ordinance of 2006.

##### **Section 1.02 - Purpose**

The purpose of the Ordinance is to:

1. Provide for the orderly development of the Village while minimizing the impacts of incompatible adjoining land uses and preventing nuisances from interfering with the reasonable use and enjoyment of private property. In all cases, it is the purpose of this Ordinance to regulate the use of private property so that it does not adversely impact upon broader public interest;
2. Insure the public health, safety and general welfare;
3. Promote the use of lands and natural resources of the Village in accordance with their character and adaptability and in turn, limit their improper use;
4. Reduce hazards to life and property;
5. Lessen congestion on the public roads and streets;
6. Provide, in the interests of health and safety, the minimum standards under which certain buildings and structures may hereafter be erected and used;
7. Facilitate the development of an adequate system of transportation, education, recreation, sewage disposal, safe and adequate water supply and other public requirements;
8. Conserve life, property and natural resources and the expenditure of funds for public improvements and service to conform with the most advantageous uses of land, resources and properties.

### **Section 1.03 - Authority**

This Ordinance is ordained and enacted into law pursuant to the provisions and in accordance with the Michigan Zoning Enabling Act, Act 110 of Public Acts of 2006.

### **Section 1.04 - Validity**

This Ordinance and various parts, sections, subsections, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section, subsection, phrase or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of this Ordinance shall not be affected thereby. The Village Council hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause thereof irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid.

### **Section 1.05 – Limitation of Zoning Ordinance**

The provisions of this Ordinance shall not impact the continued use of any dwelling, building or structure or any land or premises, which was lawful and existing on the adoption date of this Ordinance.

### **Section 1.06 – Repeal of Previous Zoning Ordinance**

1. This ordinance repeals and replaces any previous Village of Empire Zoning Ordinance in its entirety.
2. The repeal of the Village of Empire Zoning Ordinance of 1996 as amended, as provided, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred there under or actions involving any provisions of said ordinance sections repealed is hereby continued in force and effect after the passage, approval and publication of this Ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities and actions therefore.

### **Section 1.07 - Interpretation and Relationship to other Regulations**

In interpreting and applying the provisions of this Zoning Ordinance, these provisions must be held to be the minimum requirements for the promotion of public safety, health, convenience, comfort, prosperity, and general welfare. It is not intended by this Zoning Ordinance to interfere with or abrogate or annul any easements, covenants, restrictions established by other ordinances or statutes, or agreements between private parties. However, where this Zoning Ordinance imposes a greater restriction upon the use of buildings or lots or upon the height of buildings or requires larger open spaces than are imposed or required by any other applicable rule, covenant or law, the provisions of this Zoning Ordinance shall govern. The Village has no responsibility or authority for enforcing private agreements or covenants.

### **Section 1.08 - Conflict with State or Federal Regulations**

If the provisions of this Zoning Ordinance are inconsistent with those of the state or federal government, the more restrictive provisions will control, to the extent permitted by law.

### **Section 1.09 - Scope of Zoning Ordinance**

This Ordinance establishes regulations for lots, uses, and activities, that relate to accessory uses, dimensional standards, various exceptions, access and other aspects of land use and design within the Village of Empire.

Except as otherwise provided in this Ordinance, no use, lot or parcel of land, no existing building, structure or part thereof and no new building, structure or part thereof shall hereafter be undertaken, located, erected, constructed, re-constructed, altered or used for purposes other than in conformity with the provisions of this Ordinance.

Absent a variance or special exception, this Ordinance prohibits uses of land unless they are expressly permitted as a permitted use by right, special land use or can be found to be accessory to such uses. The rule of accessory use is to address the impossibility of providing expressly by Zoning Ordinance for every possible lawful use.

### **Section 1.10 - Validity and Severability**

If any court of competent jurisdiction shall declare any part of this Ordinance to be invalid, such ruling shall not affect any other provisions of this Ordinance not specifically included in said ruling. If any court of competent jurisdiction shall declare invalid the application of any provision of this Ordinance to a particular land, parcel, lot, district, use, building or structure, such ruling shall not affect the application of said provision to any other land, parcel, lot, district, use, building or structure not specifically included in said ruling.

## Article 2: Definitions

### Section 2.01 - Rules of Construction

In order to clarify the intent of the provisions of this Ordinance, the following rules shall apply, except when clearly indicated otherwise.

1. The particular shall control the general.
2. The word "shall" is always mandatory and never discretionary. The word "may" is permissive.
3. Words used in the present tense shall include the future; words in the singular number shall also denote the plural and the plural shall also denote the singular.
4. A "building" or "structure" includes any part thereof.
5. The phrase "used for" includes "arranged for", "designed for", "intended for", "maintained for" and "occupied for".
6. Unless the context clearly indicates otherwise, where a regulation involves two (2) or more items, conditions, provisions, or events, the terms "and", "or", such conjunction shall be interpreted as follows:
  - A. "And" denotes that all the connected items, conditions, provisions, or events apply in combination.
  - B. "Or" indicates that the connected items, conditions, or provisions, or events may apply singly or in any combination.
7. "Village" shall refer specifically to the Village of Empire.
8. The term "person" shall mean an individual, firm, corporation, association, partnership, limited liability company or other legal entity, or their agents.
9. Terms not defined shall be assumed to have the meaning customarily assigned them.
10. Any necessary interpretation of this Ordinance shall be defined by the Village Zoning Board of Appeals.

### Section 2.02 - Definitions

**Accessory Structure:** Any building or structure that is customarily incidental and subordinate to the use of the principal building or structure, including but not limited to, accessory buildings, personal freestanding television and radio reception antennas, satellite dishes and signs.

**Accessory Use:** A use naturally and normally incidental and subordinate to the main use of the land or building.

**Adult Arcade:** Any place to which the public is permitted or invited wherein coin-operated or slug-operated electronically or mechanically controlled still or motion picture machines, projectors, other image-producing devices or live shows which show images to five or fewer persons per machine or booth at any one time and where the images so displayed are distinguished or characterized by depicting or describing of Specified Sexual Activities or Specified Anatomical Areas.

**Adult Bookstore or Adult Video Store:** A commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration one or more of the following:

1. Books, magazines, periodicals or other printed matter or photographs, films, motion picture, video cassettes or video reproductions, slides or other visual representations or media which depict or describe Specified Sexual Activities or Specified Anatomical Areas; or
2. Instruments, devices, or paraphernalia that are designed for use in connection with Specified Sexual Activities.

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing Specified Sexual Activities or Specified Anatomical Areas and still be categorized as an Adult Bookstore or Adult Video Store. The sale of such material shall be deemed to constitute a principal business purpose of an establishment if it occupies 25% or more of the floor area or visible inventory within the establishment.

**Adult Cabaret:** A nightclub, bar, restaurant, or similar commercial establishment that regularly features:

1. Persons who appear in a state of nudity;
2. Live performances that are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities;
3. Films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; or
4. Persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

**Adult Motel:** A hotel, motel or similar commercial establishment that:

1. Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas and has a sign visible from the public right of way that advertises the availability of any of the above;
2. Offers a sleeping room for rent for a period of time that is less than twelve (12) hours; or
3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twelve (12) hours.

**Adult Motion Picture Theater:** A commercial establishment which for any form of consideration, regularly and primarily shows films, motion pictures, video cassettes, slides, or other photographic reproductions or visual media that are characterized by depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

**Adult Theater:** A theater, concert hall, auditorium, or similar commercial establishment that regularly features a person or persons who appear in a state of nudity or live performances that are characterized by exposure of Specified Anatomical Areas or by Specified Sexual Activities.

**Agriculture:** The act or business of cultivating or using land and soils for the production of crops for the use of animals or humans and includes, but is not limited to, purposes related to agriculture, farming, dairying, pasturage, horticulture, floriculture, viticulture, and animal and poultry husbandry. Flower, vegetable or other gardens maintained only for the property owner(s)' use and/or enjoyment are not considered agriculture.

**Alley:** A public thoroughfare which affords a secondary means of access to the abutting property.

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

**Alternative Tower Structure:** Clock towers, bell steeples, light poles and similar mounting structures that camouflage or conceal the presence of antennas.

**Anemometer:** An instrument for measuring and recording the speed of the wind.

**Anemometer Tower:** A structure, including all accessory facilities, temporarily erected for no more than two (2) years, on which an anemometer is mounted for the purposes of documenting whether a site has wind resources sufficient for the operation of a wind turbine generator.

**Antenna:** Any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio and television frequencies, wireless telecommunication signals or other communication signals, excluding Ham or amateur radio, emergency communications, and radar signals.

**Appearance Ticket:** see Municipal Civil Infraction Citation.

**Architectural Features:** Parts of a building which are not for human occupancy, that shall include but are not limited to cornices, eaves, gutters, courses, sills, lintels, bay windows, chimneys and decorative ornaments.

**Automobile Repair:** Any major activity involving the general repair, rebuilding, or reconditioning of motor vehicles or engines; collision repair, such as body, frame, or fender straightening and repair; overall painting and vehicle rust-proofing; refinishing or steam cleaning.

**Automobile Sales Area:** Any space used for display, sale or rental of motor vehicles, in new or used and operable condition.

**Automobile Wash Establishment:** A building, or portions thereof, the primary purpose of which is that of washing and cleaning motor vehicles.

**Average:** For the purpose of this Ordinance, the term, "average" will be an arithmetic mean.

**Backhaul Network:** The lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices, and/or long-distance providers, or the public switched telephone network.

**Basement:** That portion of a building which is partly or wholly below finished grade but so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average grade to the ceiling. A basement, as defined herein, shall not be counted as a story. A cellar is a basement.

**Bed and Breakfast Establishments:** Any owner occupied dwelling used or designed in such a manner that certain rooms in excess of those used by the family are rented to the transient public for compensation.

**Bedroom:** A dwelling room used or intended to be used by human beings for sleeping purposes.

**Board of Appeals:** As used in this Ordinance, this term means the Village of Empire Zoning Board of Appeals.

**Boat and/or Canoe Livery and Boat Yard:** A place where boats and/or canoes are stored, rented, sold, repaired, docked and serviced.

**Buffer Strip:** A strip of land for the planting of shrubs and/or trees and/or other vegetation and the possible creation of a berm to serve as an obscuring screen to carry out the requirements of this Ordinance.

**Building:** Any structure having a roof supported by columns, or walls for the shelter or enclosure of persons, animals, or property of any kind.

**Building, Height:** In all districts building height is limited to thirty-two (32) feet and no more than two and one-half (2.5) stories. In the case of a principle building, building height shall be determined as the greatest vertical distance from the natural grade of any side to the highest point of the roof surface. A cupola, widow's watch or tower that extends above the roof line shall be considered the highest point of the roof surface on roofs with such features. The measurement of the height of an accessory building or structure shall also be determined as the greatest vertical distance from the natural grade of any side to the highest point of the roof surface.

**Building Inspector:** An individual responsible for administering the County Building Code.

**Buildable Width:** The width of a lot left for building after required side yards are provided.

**Campgrounds:** Any parcel or tract of land, under the control of any person wherein sites are offered for the use of the public or members of an organization, either free of charge or for a fee for the establishment of temporary living quarters for five (5) or more recreational units.

**Car Wash Facility:** See Automobile Wash Establishment.

**Church:** See Place of Worship.

**Clinic:** A building or group of buildings where patients are admitted for examination and treatment by one or more health care professionals, such as a physician, dentist, or the like, except that persons are not lodged therein overnight.

**Club:** Buildings and facilities owned or operated by a corporation, association, person or persons, for social, educational, or recreational purposes.

**Collocate** means to place or install wireless communications equipment on an existing wireless communications support structure or in an existing equipment compound.

**Communication tower and facilities** means wireless communication, broadband, licensed or unlicensed, terrestrial or satellite, including commercial mobile, private mobile, broadcast, and public safety services, as well as fixed wireless broadband, and other communication services.

**Condominium Unit:** That portion of a condominium project designed and intended for occupancy and use by the unit owner consistent with the provisions of the master deed.

**Cupola:** A light architectural domelike structure located on the roof, which is not intended for human habitation.

**Dock:** A temporary or permanent structure, built on or over the water, supported by pillars, pilings, floats, or other supporting devices.

**Drive-Thru Business:** Any restaurant, bank or business with an auto service window.

**Driveway, Private:** A private lane, which is used for vehicular ingress or egress serving one, two or three lots, parcels or site condominium units.

**Duplex:** See Dwelling, Two-family.

**Dwelling, Accessory:** A dwelling unit accessory to a single-family residence or commercial use, located either in the principal structure or an accessory building, such as a garage. An accessory dwelling commonly has its own kitchen, bath, living area, sleeping area, and usually a separate entrance.

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

1. The structure is produced in a factory in accordance with the National Manufactured Housing Construction and Safety Standards Act, as amended, and
2. The structure is designed to be transported to the site in nearly complete form, where it is placed on a foundation and connected to utilities; and
3. The structure is designed to be used as either an independent dwelling or as a module to be combined with other elements to form a complete dwelling on the site.

**Dwelling, Mobile:** A factory-built, single-family structure that is transportable in one or more sections, is built on a permanent chassis, and is used as a place of human habitation; but which is not constructed with a permanent hitch or other device allowing transport of the unit other than for the purpose of delivery to a permanent site, which does not have wheels or axles permanently attached to its body or frame, and which is constructed according to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended.

**Dwelling, Multiple-Family:** A building containing three or more dwelling units designed for residential use.

**Dwelling, Single-Family:** A detached building containing not more than one dwelling unit designed for residential use.

**Dwelling, Two-Family:** A building containing not more than two separate dwelling units designed for residential use.

**Dwelling Unit:** A building or portion of a building, either site-built or manufactured off site and placed on site which contains sleeping, living, cooking, indoor sanitary facilities meeting health department rules and located under one roof, and can accommodate one family, either permanently or transiently. In the case of buildings which are occupied in part, the portion occupied shall be considered a dwelling unit, provided it is in conformance with the criteria for dwellings. In no case shall a travel trailer, truck, bus, motor home, tent or other such portable structures be considered a dwelling unit.

**Easement:** An interest in land owned by another that entitles its holders to a specified limited use or enjoyment.

**Efficiency Unit:** A dwelling unit consisting of one room, exclusive of bathroom, hallway, closets, and the like providing not less than three hundred and fifty (350) square feet of usable floor area.

**Erected:** Includes built, constructed, reconstructed, extended, enlargement, moved upon, or any physical operation on the premises intended or required for a building or structure. Excavation, fill, drainage, and general land improvements shall be considered part of erection.

**Escort:** A person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**Escort Agency:** A person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

**Essential Services:** The erection, construction, alteration, or maintenance by public utilities or municipal department or commissions of underground, surface, or overhead gas, electrical, steam, or water transmission or distribution systems, collection, communication supply or disposal systems, including mains, drains, sewers, pipes, conduits, wires, cables, fire alarm boxes, traffic signals, hydrants, towers, poles, and other similar equipment, and accessories in connection therewith reasonably necessary for the furnishing of adequate service by such public utilities or municipal departments or commissions or for the public health or general welfare, but not including buildings other than such buildings as are primarily enclosures or shelters of the above essential service equipment. Telecommunication towers or facilities, alternative tower structures, wireless communication antenna and wind turbine generators are not included within this definition.

**Equipment Compound:** An area surrounding or adjacent to the base of a wireless communications support structure and within which wireless communications equipment is located.

**Excavating:** Excavating shall be the earth moving, filling or removal of earth, sand, stone, gravel, or dirt.

**FAA:** Federal Aviation Administration.

**Family:** One or two persons or parents, with their direct lineal descendants and adopted children (and including the domestic employees thereof) together with not more than four persons not so related, living together as a single house-keeping unit. Every additional group of two or less persons in a dwelling unit shall be considered a separate family.

**Farm Use Building:** A building used in the conduct of a farm and a farm operation, as defined by the Michigan Right To Farm Act [MCL 286.471 et seq.]

**FCC:** Federal Communications Commission.

**Fences:** A perimeter, permanent, continuous barrier, or other upright structure constructed of wood, stone, ceramic material, metal, or wire enclosing the lot lines of a parcel or area to establish privacy, mark a boundary, control access, provide safety/security, and/or enclose animals.

**Fence, Picket:** A type of fence typically used decoratively for domestic boundaries, distinguished by evenly spaced vertical boards, i.e., pickets, attached to horizontal rails.

**Floor Area:** The square footage of floor space measured from exterior to exterior wall for all floors, but not including enclosed and unenclosed porches, breezeways, non-commercial garages, attic, basement and cellar area.

**Floor Area, Usable** (for the purpose of computing parking): That area used for or intended to be used for the sale of merchandise or services, or for use to serve patrons, clients or customers. Floor area used or intended to be used for the storage or processing of merchandise, hallways or for utilities or sanitary facilities, shall be excluded for the computation of "Usable Floor Area". All floor levels shall be counted.

**Gasoline Service Station:** Any land, building or structure used for sale or retail of motor vehicle fuels, oils, or accessories, or installing or repairing parts and accessories.

**Grade, Finished:** The elevation of the ground upon the completion of construction and improvements.

**Grade, Natural:** The elevation of the ground surface in its natural state, before human alterations.

**Greenbelt, Shoreline:** An undisturbed area of land paralleling the water's edge to a depth of the required zoning setback distance if not otherwise stipulated, which is retained in a natural condition and is essentially void of any structural improvements, to serve as a waterfront buffer. Beaches and/or vegetated areas shall be defined as shoreline greenbelts.

**Hazardous Substances:** Any substances or materials that, by reason of their toxic, caustic, corrosive, abrasive or otherwise injurious properties, may be detrimental to the health of any person handling or otherwise coming into contact with such materials or substances. Household products in typical household quantities shall be excluded from this definition.

**Height:** When referring to a tower or other structure, the distance measured from finished grade to the highest point on the tower or other structure, including the base pad.

**Home Occupation:** A profession, occupation, activity or use conducted within a dwelling or accessory structure which is incidental and secondary to the use of the lot and dwelling for residential purposes, and which does not alter the exterior of the property or affect the residential character of the neighborhood.

**Hotel, Motel or Inn:** A building occupied or used as a predominantly temporary abiding place by individuals or groups of individuals, with or without meals, and in which there are more than five (5) sleeping rooms.

**Industrial Park:** An industrial area designed and equipped to accommodate more than one independent industrial use with necessary facilities and services arranged to be compatible with neighboring uses and to minimize unsightly views.

**Industry:** A use engaged in manufacturing, fabricating, processing and/or assembly activities.

**Inn:** See Hotel, Motel or Inn.

**Junkyard:** An open area where waste, used or second hand materials are bought and sold, exchanged, stored, baled, packed, disassembled or handled including, but not limited to scrap or other metals, paper, rags, rubber tires and bottles. A "Junkyard" includes automobile wrecking yards and includes any area of more than two hundred (200) square feet for storage, keeping or abandonment of junk, but does not include uses established entirely within enclosed buildings.

**Kennel:** A kennel is an establishment wherein four (4) or more animals over one (1) year of age are confined and kept for sale, boarding, breeding, training or sporting purposes, as a business.

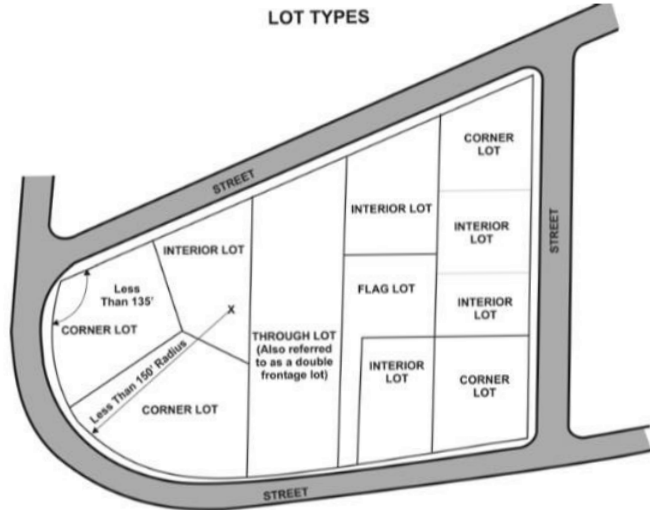
**Land Use Permit:** A land use permit is written authority as issued by the Zoning Administrator on behalf of the Village permitting the construction, moving, exterior alteration or use of a building or land in conformity with the provisions of this Ordinance.

**Landscape buffer:** See Buffer Strip.

**Loading Space:** An off-street space on the same lot with a building or group of buildings, for temporary parking of a commercial vehicle while loading or unloading merchandise or materials. Off-street loading space is not to be included as an off-street parking space in computation of required off-street parking.

**Lot:** A parcel of land or site condominium occupied or to be occupied by a use or building and its accessory buildings or structures together with such open spaces, minimum area, and width required by this Ordinance for the district in which located, but not including any area within any abutting right-of-way or traffic lane.

**Lot, Corner:** A lot located at the intersection of two streets or a lot bounded on two sides by a curving street. Corner lots shall have two (2) front lot lines abutting public or private streets, the front lot line shall mean the line separating a lot from a street right of way.



**Lot Coverage:** The part or percent of the lot occupied by buildings or structures, including accessory buildings or structures and all impervious surfaces.

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

**Lot, Flag:** A lot whose access to the public street is by a narrow, private right-of-way that is either a part of the lot or an easement across another property.

**Lot, Interior:** A lot other than a corner lot with only one (1) lot line fronting on a street.

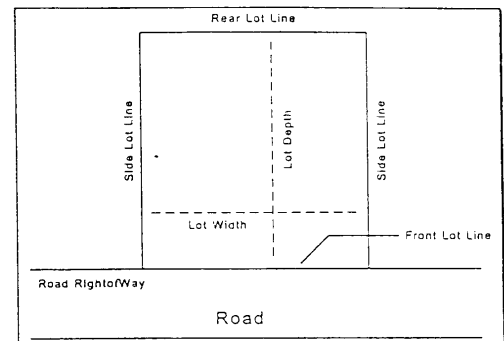
**Lot Line, Front:** In the case of an interior lot abutting upon one public or private street, the front lot line shall mean the line separating such lot from such street right-of-way.

**Lot Line, Rear:** The lot line being opposite the front lot line. In the case of a lot irregularly shaped at the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than ten (10) feet long lying farthest from the front lot line and wholly within the lot.

**Lot Line, Side:** Any property line bounding a lot that is not a front lot line or a rear lot line.

**Lot of Record:** A lawfully created parcel of land defined by a legal description and recorded in the office of the Leelanau County Register of Deeds.

**Lot, Through:** An interior lot having frontage on two (2) more or less parallel streets.



**Lot, Waterfront:** A lot having frontage directly upon a lake, river, or stream. The portion adjacent to the water is considered the water frontage.

**Lot Width:** The horizontal distance between the side lot lines, measured at the two (2) points where the front setback line, intersects the side lot lines. Where side lot lines are essentially parallel, but are not radial or perpendicular to the street line, the lot width shall be measured along a line drawn perpendicular from the side lot line.

**Lot, Zoning:** A contiguous tract of land that at the time of filing for a Zoning permit is designated by its owner or developer as a tract to be used, developed, or built upon as a unit, under single ownership or control. A Zoning Lot may not always coincide with a lot of record but may consist of a portion of a lot of record or may include one or more lots of record.

**Manufactured Home:** see Dwelling, Manufactured.

**Marina:** A commercial boat facility providing any of the following: dockage, supplies storage, sales and services for watercraft.

**Master Deed:** The document recording a condominium project to which are attached as exhibits and incorporated by reference the approved bylaws for the condominium project and the condominium subdivision plan.

**Master Plan or Comprehensive Plan:** The statement of policy by the Village Planning Commission and approved by the Village Council relative to the agreed-upon desirable physical pattern of future community development. It consists of a series of maps, charts, and written material representing in summary form the community's conception of how it should grow in order to bring about the very best community living conditions. It is the master plan provided for in the Michigan Municipal Planning Act, 1931 PA 285 and described in sections 1 and 6 thereof [MCL 125.31 and 125.36(3) and (4) or any successor statute.

**Mobile Home:** see Dwelling, Mobile.

**Mobile Home Park:** A parcel of land which has been planned and improved for the placement of three (3) or more mobile homes for residential dwelling use.

**Mobile Home Site:** A plot of ground within a mobile home park designed for the accommodation of one mobile home.

**Motel:** See Hotel.

**Municipal Civil Infraction Citation:** A written complaint or notice prepared by an authorized Village official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.

**Multi-Business Plaza:** Those structures that contain more than one enterprise, leased under separate ownership, and may have a common entrance or multiple entrances.

**Nonconforming Lot of Record:** A lot of record that legally existed on or before the effective date of this ordinance or any amendment to this ordinance and does not meet dimensional requirements of this ordinance or amendment.

**Nonconforming Structure:** A building, structure, or portion thereof that lawfully existed before the effective date of this ordinance or any amendment to this ordinance and that does not meet the floor area, setback, parking or other dimensional regulations for the zoning district in which such building or structure is located.

**Nonconforming Use:** A use which lawfully occupied a building or land at the effective date of this Ordinance or Amendments thereto that does not conform to the use regulations of the Zoning District in which it is located.

**Nude Model Studio:** Any place where a person who displays Specified Anatomical Areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration, but does not include an educational institution funded, chartered, or recognized by the State of Michigan.

**Nudity or a State of Nudity:** Knowingly or intentionally displaying in a public place, or for payment or promise of payment by any person including, but not limited to payment of an admission fee, any individual's genitals or anus with less than a fully opaque covering, or a female individual's breast with less than a fully opaque covering of the nipple and areola. Public nudity does not include any of the following:

1. A woman's breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.
2. Material as defined in section 2 of Act No. 343 of the Public Acts of 1984, being section 752.362 of the Michigan Compiled Laws.
3. Sexually explicit visual material as defined in section 3 of Act No. 33 of Public Acts of 1978, being section 722.673 of the Michigan Compiled Laws.

**Nuisance Factor:** An offensive, annoying, unpleasant, or obnoxious thing or practice, a cause or source of annoyance, especially a continuing or repeating invasion of any physical characteristics of activity or use across a property line which can be perceived by or affects a human being of reasonable sensibility, or the generation of an excessive or concentrated movement of people or things, such as noise; dust; heat; electronic or atomic radiation; objectionable effluent; noise or congregation of people, particularly at night.

**Nursery, Plant Materials:** A space, building or structure, or combination thereof, for the storage of live trees, shrubs, or plants offered for retail sale on the premises, including products used for gardening or landscaping. The definition of nursery does not include space used for the sale of fruits or vegetables.

**Occupancy Permit:** A permit issued by the Leelanau County building official that certifies a structure as being completed and suitable for use and/or occupancy.

**Off Street Parking Lot:** A facility providing vehicular parking spaces, along with adequate drives and aisles. Adequate maneuvering space shall also be included to allow unrestricted ingress and egress to at least two (2) vehicles.

**Open Air Business:** Includes uses operated for commercial or industrial activities, substantially in the open air, including:

1. Bicycle, utility truck or trailer, motor vehicle, boats, or home equipment sale, repair or rental services.
2. Outdoor display and sale of garages, motor homes, mobile home, snowmobiles, farm implements, swimming pools and similar activities.
3. Retail sale of trees, fruit, vegetables, shrubbery, plants, seeds, top-soil, humus, fertilizer, trellises, lawn furniture, playground equipment, and other home garden supplies and equipment.
4. Miniature golf, golf driving ranges, children's amusement park or similar recreation uses operated for profit.

**Open Space:** Land upon which no structures, parking, rights-of-way, or other improvements have or will be made and that will not be committed for future use other than outdoor recreational use.

**Ordinary High Water Line:** The line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the soil and the vegetation. On an inland lake which has had a level established by law, it means the high established level. On a river or stream, the ordinary high water mark shall be the ten-year flood limit line.

**Overhang:** The portion or section of a roof which extends beyond the side wall of a structure. If the overhang extends no more than 24 inches beyond a sidewall of the structure, it is not considered as a part of the structure for determining any setback requirements established in this ordinance. When the overhang extends more than 24 inches beyond a side wall of the structure, it is considered to be part of the structure for determining any setback requirements established in this ordinance.

**Park:** Properties and facilities owned or operated by any governmental agency, or owned or operated by any private agency, which are open to the general public for recreational purposes.

**Parking Space:** An area of definite length and width exclusive of drives, aisles, or entrances giving access thereto, and fully accessible for the storage or parking of permitted vehicles.

**Place of Worship:** A building wherein people regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such principal purpose.

**Planned Unit Development (PUD):** A type of development to be planned and built as a unit and which permits upon review and approval, variations in many of the traditional controls related to density, land use, setbacks, open space and other design elements, and the timing and sequencing of the development. Such developments can be proposed as either mixed use or single use developments.

**Planning Commission:** For the purpose of this Ordinance the term Planning Commission is deemed to mean the Village of Empire Planning Commission.

**Pick-up Camper:** See Recreational Vehicle.

**Principal Use:** The main use to which the premise is devoted and the primary purpose for which the premise exists.

**Professional Office:** The office of a professional person such as a doctor, dentist, engineer, architect, attorney, insurance or real estate agent, and the like.

**Public Sewer Systems:** A public sewer system shall be defined as a central or community sanitary sewage and collection system of pipes and structures including pipes, conduits, manholes, pumping stations, sewage and waste water treatment works, diversion and regulatory devices, and outfall structures, collectively or singularly, actually used or intended for use by the general public or a segment thereof, for the purpose of collecting, conveying, transporting, treating or otherwise handling sanitary sewage or industrial liquid waste of such a nature as to be capable of adversely affecting the public health operated and maintained by the general public and/or any agency for the general public.

**Public Utility:** Any person, firm, corporation, municipal department board, or commission fully authorized to furnish and furnishing, under federal, state or municipal regulations, to the public, electricity, gas, steam, communications, telegraph, transportation, water services, or sewage disposal.

**Recreational Vehicle:** A vehicle designed to be used primarily for recreational purposes, including but not limited to, temporary sleeping quarters and/or cooking facilities, or a unit designed to be attached to a vehicle and used for such purposes, including self-propelled motor homes, pickup campers, fifth wheel trailers, travel trailers, and tent trailers.

**Resort:** A recreational lodge, camp or facility operated for gain, and which provides overnight lodging and one or more of the following: golf, skiing, dude ranching, recreational farming, snowmobiling, pack trains, bike trails, boating, swimming, hunting and fishing and related or similar uses normally associated with recreational resorts.

**Retail and Retail Stores:** Any building or structure in which goods, wares, or merchandise are sold to the ultimate consumer for direct consumption and not for resale.

**Road, Private:** An area of land which is not a public road, but which is intended for passage to and from four (4) or more lots or site condominium units.

**Road Right-of-Way:** A street, alley or thoroughfare or easement permanently established for passage of persons or vehicles which, if used to establish a lot front, provides adequate permanent access.

**Roadside Stand:** An accessory or temporary farm structure operated for the purpose of selling local agricultural products, primarily raised or produced on the same farm premises or other properties under the same ownership or management.

**School:** A public or private educational institution offering students a conventional academic curriculum, including but not limited to kindergartens, elementary schools, middle schools, high schools and colleges. Such term shall also include all adjacent properties owned by and used by such schools for educational, research, and recreational purposes.

**Setback:** The minimum required horizontal distance from the applicable right-of-way line, easement, water feature or property line of a lot within which no buildings or structures may be placed.

**Sexual Encounter Center:** A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
2. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity.

**Sexually Oriented Business:** A business or commercial enterprise engaging in any of the following: (1) adult arcade; (2) adult bookstore or adult video store; (3) adult cabaret; (4) adult motel; (5) adult motion picture theater; (6) adult theater; (7) escort agency; (8) nude model studio; and (9) sexual encounter center.

**Shopping Center:** A group of commercial establishments, planned, developed, owned, and managed as a unit, with off-street parking provided on the property, and related in its location, size and type of shops to the trade area which the unit serves. Three or more retail stores and services, so arranged or planned, shall qualify as a shopping center for zoning purposes.

**Signs:**

1. **Accessory Sign:** A sign that is not for a principal use of the property on which it is located, including warning signs.
2. **Animated Sign:** A sign that uses movement, spins, or changes of lighting to depict action or create a special effect or scene.
3. **Awning/Canopy Sign:** A sign that is part of or attached to the surface of an awning/canopy.
4. **Banner Sign:** A temporary sign printed or displayed upon cloth or other flexible material.
5. **Changeable Copy Sign:** A sign or a portion of a sign with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign. A sign on which the message changes more than eight (8) times per day shall be considered an animated sign and not a changeable copy sign for purposes of this Ordinance.
6. **Corner Lot Sign:** Signs placed facing both public streets on corner lots.
7. **Display Area:** The entire space used for lettering and symbols on one vertical plane.
8. **Feather Flag:** A flag characterized by its tall, slender design that resembles a feather.

Feather flag is designed to move with the wind, usually attracting attention with its motion and graphics or stylized words. They are typically 5 to 15 ft tall and attached to a flexible pole (from 6 to 20 feet tall) and is considerably narrower than its height.

9. **Flag:** Any cloth or bunting that is either attached to a staff or pole or of a nature that is usually attached to a staff or pole.
10. **Flashing Lighted Sign:** An illuminated sign that intermittently and repeatedly flashes on and off and/or creates an illusion of a flow of lights.
11. **Freestanding or Ground Sign:** A sign supported by permanent uprights or braces in the ground.
12. **Identification Sign:** A sign that identifies a building or street address.
13. **Illuminated Sign:** A sign rendered visible during the period from sunset to sunrise by means of an internal light source or by means of an exterior light source directed on to or in the vicinity of the sign.
14. **Marquee:** A permanent overhang or roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the buildings and are generally designed and constructed to provide protection from the weather.
15. **Marquee Surface Sign:** A sign attached to or made part of a marquee.
16. **Multi-Business Plaza:** Those structures that contain more than one enterprise, leased or owned, and may have a common entrance or multiple entrances.
17. **Nonconforming Sign:** Any existing sign on the effective date of this Ordinance, as amended, which does not at that time comply with all the provisions of this Ordinance and any amendments.
18. **Permitted Signs:** A permitted sign is a sign for which a sign if permit is required and obtained.
19. **Portable Sign/Trailer Sign/Sandwich Board:** A sign that is designed to be transported, including but not limited to signs:
  - With a chassis or support constructed without wheels.
  - Designed to be transported by trailer or wheels.
  - Converted A- or T-frame signs.
  - Attached temporarily to ground, a structure, or other signs.
  - Mounted on the exterior of a vehicle and visible from the public right-of-way.
  - Menu and sandwich boards.
  - Searchlight stand; and
  - Hot-air or gas-filled balloons or umbrellas.
20. **Projecting Sign:** A sign attached to or erected on the exterior wall or surface of a building that projects twelve (12) inches or more from the wall or surface.

**21. Roof Sign:** A sign mounted on or over the roof of a building and is wholly or partially supported by the building. Mansard roof signage shall be considered wall signage for the purpose of calculating allowable footage.

**22. Sign Enforcement Officer (SEO):** The Zoning Administrator or such other person as shall be designated by the Village Council.

**23. Sign:** A structure, including its base, foundation, and erections or supports upon which is displayed any words, letters, figures, emblems, symbols, designs, or trademarks by which any message or image is afforded public visibility out of doors. The following are not signs: flags smaller than 4 square feet, architectural features, tombstones, art and murals, and other memorial markers.

**24. Surface of a Sign:** The portion of the sign excluding its base, foundation, and erection supports on which a message is displayed.

**25. Temporary Sign:** A sign (including a banner or flag) intended for a limited period and without a permanent foundation.

**26. Wall sign:** A sign that is affixed to or placed flat against the exterior wall or surface of a building or structure, with no portion projecting more than twelve (12) inches from the building or structure wall.

**Site Condominium Unit:** That portion of a condominium subdivision designed and intended for ownership occupancy and use by the unit owner consistent with the provisions of the master deed.

**Site Plan:** The drawings and documents depicting and explaining all salient features of a proposed development so that it may be evaluated according to the procedures set forth in this ordinance, to determine if the proposed development meets the requirements of this Zoning Ordinance.

**Special Use:** A use of land whose characteristics may create nuisance-like impacts on adjoining lands unless carefully sited and regulated according to standards established in this Ordinance (see Article 6). Approval for establishing a special land use is indicated by issuance of a Special Use Permit.

**Specified Anatomical Areas:** are defined as:

1. Less than completely and opaquely covered human genitals, pubic regions, buttocks, anus and female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

**Specified Sexual Activities:** means and includes any of the following:

1. the fondling or other erotic touching of human genitals, pubic regions, buttocks or female breast;
2. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

3. masturbation, actual or simulated; or
4. excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

**Story:** That portion of a building, other than a basement or mezzanine, included between the surface of any floor and the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it. A "mezzanine" floor shall be deemed a full story only when it covers more than fifty (50%) percent of the area of the story underneath said mezzanine, or if the vertical distance from the floor next below it to the next above it is twenty-four (24) feet or more.

**Street:** Any thoroughfare, except alleys, in the county, village or township road system, including federal, state and county roads.

**Structural Change or Alteration:** See Alterations.

**Structure:** Anything constructed or erected, the use of which requires location on the ground or attachment to something having permanent location on the ground.

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

**Temporary Building and Use:** A structure or use permitted by this Zoning Ordinance to exist during periods of construction of the main building or for special events.

**Temporary Outdoor Land Use:** Uses taking place outdoors and lasting a limited period of time not to exceed 45 days. Temporary outdoor land uses include such uses as temporary parking facilities, sidewalks, Christmas tree sale lots, festivals, music concerts, revival tents or similar quasi-civic or public activities.

**Thoroughfares Major:** A paved public street, the principal use or function of which is to provide an arterial route for through traffic, with its secondary function the provision of access to abutting property and which has been classified as a State trunk line or as a major street by action of the Village Council.

**Tourist Home:** See Bed and Breakfast Establishment.

**Tower:** Any structure that is designed and constructed for the purpose of supporting one or more antennas for telephone, radio, television, and similar communication purposes, including self-supporting lattice towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers,

alternative tower structures, and the like. The term includes the structure and any support thereto, but excludes Ham or amateur radio, emergency communications, and radar signals.

**Towers, Pre-existing Towers/Antennas:** Any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of this Ordinance.

**Trailer Coach:** See Recreational Vehicle.

**Travel Trailer:** See Recreational Vehicle.

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

**Variance:** A modification of literal provisions of this Ordinance which the Zoning Board of Appeals is permitted to grant when strict enforcement of said provision would cause practical difficulty or undue hardship owing to circumstances unique to the individual property on which the variance is sought.

**Wastewater Treatment System:** Any system for the treatment and discharge of wastewater, including sanitary waste, food waste and other similar waste waters as defined and regulated by Part 31 Water Resources Protection, of the Michigan Natural Resources and Environmental Protection Act (NREPA), 1994 P.A. 451, as amended.

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

**Wind Turbine Generator:** A tower, pylon, or other structure, including all accessory facilities, upon which any, all, or some combination of the following are mounted:

1. A wind vane, blade, or series of wind vanes or blades, or other devices mounted on a rotor for the purpose of converting wind into electrical or mechanical energy.
2. A shaft, gear, belt, or coupling device used to connect the rotor to a generator, alternator, or other electrical or mechanical energy-producing device.
3. A generator, alternator, or other device used to convert the energy created by the rotation of the rotor into electrical or mechanical energy.

**Wind Turbine Generator, Commercial:** A wind turbine generator designed and used primarily to generate electricity by or for sale to public utility companies.

**Wind Turbine Generator Farm, Commercial:** Two (2) or more wind turbine generators located on the same parcel designed and used primarily to generate electricity by or for sale to public utility companies.

**Wind Turbine Generator, Noncommercial:** A wind turbine generator designed and used primarily to generate electricity or produce mechanical energy for use on the property where located.

**Wind Turbine Generator Tower Height:** The distance between the ground and the highest point of the wind turbine generator, plus the length by which the rotor wind vanes or blades

mounted on a horizontal axis wind turbine rotor exceeds the height of the wind turbine generator.

**Wireless Communications Equipment** means the set of equipment and network components used in the provision of communications services, including, but not limited to antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cables, and coaxial and fiber optic cables, but excluding wireless communications support structures.

**Wireless Communications Support Structure** means a structure that is designed to support, or is capable of supporting, wireless communications equipment, including a monopole, self-supporting lattice tower, guyed tower, water tower, utility pole or building.

**Yard:** A space open to the sky between a building and the lot lines of the parcel of land on which located, unoccupied or unobstructed by an encroachment or structure except as otherwise provided by this Ordinance.

**Yard, Front:** A yard across the full width of the lot extending from the front line of the principal building to the front lot line.

**Yard, Rear:** A yard extending across the full width of the lot from the rear line of the building to the rear lot line.

**Yard, Side:** A yard between the side lot line and the nearest side of the principal building, extending between the front yard and rear yard.

**Zoning Administrator:** The authorized individual charged with the responsibility of administering this Ordinance and appointed by the Village Council.

## **Article 3: General Regulations**

### **Section 3.01 – The Effect of Zoning**

1. In order to carry out the intent of this Ordinance, no excavation, use or activity on a piece of land shall be allowed or maintained, no building or structure or part thereof shall be allowed to be used, constructed, remodeled, altered, or moved upon any property unless it is in conformance with this Ordinance, and a land use permit, if required, has been obtained, except in the case of lawful nonconforming uses.
2. If any activity, use, building, structure or part thereof is placed upon a piece of property in direct conflict with the intent and provisions of this Ordinance, such activity, use, building or structure shall be declared a nuisance per se and may be required to be vacated, dismantled, abated, or cease operations by any legal means necessary and such use, activity, building or structure shall not be allowed to function until it is brought into conformance with this Ordinance.
3. In the event that any lawful use, activity, building or structure which exists or has begun substantial construction at the time of the adoption of this Ordinance and is not in conformance with the provisions of the zoning district in which it is located, such use, activity, building or structure shall be considered a legal nonconforming use and be allowed to remain as such, including completion of construction.

### **Section 3.02 – Nonconformities**

1. **Nonconforming Lots of Record**
  - A. In any district, principal structures and customary accessory buildings may be erected on any nonconforming lot of record provided a permit for construction of a well, wastewater treatment system is granted by the Leelanau-Benzie County Health Department and Michigan Department of Environment Great Lakes and Energy (EGLE) and can meet all applicable zoning district regulations.
  - B. If any nonconforming lot or lots are contiguous with other such nonconforming lots under the same ownership, the owner shall be required to combine such lots to provide parcels which shall more closely meet at least the minimum requirements for the district in which they are located.
2. **Nonconforming Use of land and/or Structures**
  - A. Any nonconforming use and/or structure damaged by fire, explosion, vandalism, act of God or by other natural causes can be restored or rebuilt in the same location provided that the nonconformity is not expanded. Any such repair or reconstruction shall conform to all other requirements of this Ordinance and shall obtain a Land Use Permit from the Zoning Administrator.
  - B. For the purposes of maintaining health and safety, all nonconforming structures and buildings may be repaired and maintained or expanded, including but not limited to new fire escapes/structures, Americans with Disabilities Act compliance structures, and other such measures for the protection of public health and safety.

- C. No nonconforming use of land and structures shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of this Ordinance, except as otherwise provided for in this **Section 3.02**.
- D. Any nonconforming principal residential structure may be replaced for any reason provided the replacement structure complies with the following criteria:
  - 1) Does not violate any setback requirement by more than 50 percent,
  - 2) Does not exceed the original structure's spatial envelope both horizontally and vertically,
  - 3) The structure does not encroach on the required natural vegetation strip, and,
  - 4) The maximum impervious surfaces standards are not exceeded.
- E. Any nonconforming use may be carried on throughout any parts of a building that were predominantly arranged or designed for such use, but no such use shall be extended to occupy any land outside such building.
- F. Any nonconforming use may be changed to another nonconforming use if determined to be equally or more appropriate by the Zoning Board of Appeals after receiving a recommendation of the Zoning Administrator.
- G. Any structure, or the combination of structure and land, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located and the nonconforming use may not thereafter be resumed.
- H. Changes in tenancy and ownership of nonconforming premises are permissible.

### 3. **Abandonment of Nonconforming Use or Structure**

If a property owner has an intent to abandon a nonconforming use or structure and in fact abandons this nonconforming use or structure for a period of one (1) year, then any subsequent use of the property or structure shall conform to the requirements of this Ordinance. When determining the intent of the property owners to abandon a nonconforming use or structure, the zoning administrator shall consider the following factors:

- A. Whether utilities, such as water, gas, and electricity to the property have been disconnected.
- B. Whether the property, buildings, and grounds have fallen into disrepair.
- C. Whether signs or other indications of the existence of the nonconforming use have been removed.
- D. Whether equipment or fixtures necessary for the operations of the nonconforming use have been removed.
- E. Other information or actions that evidence an intention on the part of the property owner to abandon the nonconforming use or structure.
- F. Whether any licenses or permits associated with the use have been maintained or allowed to lapse.

- G. U.S. Mail delivery has been terminated or mail is forwarded to another address.
- H. The tax classification of the property has been changed to reflect another use.
- I. Sufficient evidence of plans or progress to bring a structure back into use.
- J. Action to determine if a nonconforming use was intended to be discontinued by the owner may be delayed if any of the following is ongoing:
  - i. Property held in Probate;
  - ii. Insurance settlement in dispute; or
  - iii. Criminal investigation.
- K. Removal or destruction of the use and/or structure shall eliminate the nonconforming status of the land (premises).
- L. A nonconforming use shall not be extended to displace a conforming use.

**4. Creation of Nonconforming Lots or Parcels**

No lot area and no yard, court, parking areas or other required space shall be divided, altered, reduced or diminished as to make the area or dimension less than the minimum required or more than the maximum allowed under this Ordinance, except where such reduction or expansion has been brought about by the expansion or acquisition of public right-of-way for a street, road, or highway. If a required area is already less than the minimum required under this Ordinance, said area or dimension shall not be further divided or reduced.

**5. Repairs and Maintenance**

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**6. Expansion or Enlargement of Nonconforming Structures**

Any nonconforming structure may be changed, renovated and altered without increasing a dimensional nonconformity. In all zoning districts, a nonconforming structure shall not be expanded or enlarged except by approval by the Zoning Administrator. If rejected by the Zoning Administrator, a landowner/applicant may appeal the Zoning Board of Appeals pursuant to Section 9.02.5-Exercising Powers. The Zoning Administrator may allow such expansion or enlargement only upon a finding that said expansion or enlargement:

- A. does not materially increase the nonconformity of such structure; and
- B. will not reduce the value or otherwise limit the lawful use of adjacent premises; and
- C. will essentially retain the character and environment of abutting premises; and
- D. will not cause, perpetuate or materially increase any nuisance aspects of the use upon adjacent uses (e.g., noise, glare, traffic congestion or land over-crowding).

### **Section 3.03 – Accessory Buildings**

1. Authorized accessory buildings may be connected to the principal building or may be connected to the principal building by a roofed porch, breezeway or similar structure or may be completely detached from the principal building.
2. An accessory building which is attached to a principal building, with one or more common walls, shall be considered part of the principal building.
3. A detached accessory building shall comply with all setback requirements for the district in which the accessory building is located.
4. An accessory building shall not be located within the front yard of a lot.
5. An accessory building may only be built after the exterior of the principal structure is completed.
6. Mobile homes, recreational vehicles or trailers shall not be used as an accessory building.

### **Section 3.04 – Essential Services**

The erection, construction, alteration, maintenance, and operation by utilities or municipal departments or commissions, of overhead or underground gas, electrical, steam or water distribution, transmission systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, wires, hydrants, structures, towers, poles, electrical substations, gas regulator stations, and other similar equipment and accessories in connection therewith reasonably necessary for the furnishing of adequate service by such public utility or municipal department or commission, or for the public health or safety or general welfare, shall be permitted as authorized or regulated by any laws and the ordinances of the Village of Empire in any Zoning District.

Telecommunications towers, alternative tower structures, antennas, wind turbine generators, and anemometer towers shall be regulated and permitted pursuant to this Ordinance and shall not be regulated or permitted as essential services, public utilities or private utilities.

### **Section 3.05 – Mobile Homes**

Mobile homes sited on individual lots shall meet the standards for minimum lot size, yard set-backs, minimum floor area and minimum dwelling unit width for the district in which they are located and shall meet the following additional standards:

1. Mobile homes shall be attached to an approved permanent foundation or basement and shall be anchored using a system that meets the Michigan Manufactured Housing Commission requirements.
2. Mobile homes shall be installed according to manufacturer's set up requirements, and the construction of the unit shall comply with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended.
3. The wheels, axles and towing assembly shall be removed from a mobile home before the unit is attached to the foundation. Additionally, no mobile home shall have any exposed undercarriage or chassis.

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

### **Section 3.06 – Accessory Dwelling Unit**

Accessory dwelling unit as defined in Article 2, shall comply with the following regulations:

1. Residence and Incidental Use:

The accessory dwelling unit shall be clearly incidental to the principal residence or commercial use on the site. Accordingly, the following conditions shall be met:

- A. Only one (1) such accessory dwelling unit shall be permitted on each parcel.
- B. The total floor area of the accessory dwelling unit shall not exceed the square footage of the first floor of the primary structure.

2. Compatibility with Surrounding Land Use:

The design of the accessory dwelling unit shall not detract from the single-family character and appearances of the principal residence or the surrounding neighborhood. When viewed from the outside, it shall appear that only one household occupies the site.

3. Parking and Access:

In addition to required parking for the principal residence, one additional parking space shall be provided for the accessory dwelling unit.

### **Section 3.07 – Temporary Dwelling**

1. The Zoning Administrator may issue a land use permit, pursuant to the procedures of this section, to allow a temporary dwelling within any zoning district on the same lot or parcel as a permanent dwelling under any of the following circumstances.

- A. Where a permanent dwelling is destroyed or damaged by fire, wind, or other natural causes to the extent it is no longer habitable, a temporary dwelling may be placed on the same lot or parcel as the permanent dwelling during the time the permanent dwelling is repaired.
- B. A temporary dwelling may be placed on a lot or parcel while the property owner is constructing a permanent dwelling on the same lot or parcel.

2. When requesting a land use permit for a temporary dwelling, the property owner shall file an application with the Zoning Administrator and pay the fee established by the Village Council pursuant to **Section 8.05** of this Ordinance. The application shall specify the grounds under **Section 3.07.1** for the temporary dwelling and shall include the information needed to allow the Zoning Administrator to make the findings required under **Section 3.07.3**.

3. Before issuing a land use permit for a temporary dwelling, the Zoning Administrator shall find that the proposed temporary dwelling will meet all of the following standards:

- A. In the case of repairs to or construction of a permanent dwelling, the property owner shall possess a valid building permit for the contemplated repairs or construction issued by the Building Inspector.

- B. The temporary dwelling shall meet all height and setback requirements for the zoning district in which it is located.
  - C. The temporary dwelling shall be connected to safe, sanitary, and effective systems for the supply of potable water and the disposal of sewage wastes.
  - D. Adequate off-street parking shall be provided for the occupants of the temporary dwelling.
4. The Zoning Administrator may attach reasonable conditions to a land use permit for a temporary dwelling to ensure compliance with the above standards.
5. The use of a temporary dwelling shall be limited to one (1) year, or the completion of repairs to or construction of the permanent dwelling that gave rise to the need for the temporary dwelling under **Section 3.07.1**, whichever comes first. The Zoning Administrator shall grant a one-time, one (1) year extension of the land use permit for a temporary dwelling based on the repairs to or construction of a permanent dwelling upon the filing of a written statement by the property owner that the circumstances giving rise to the original need for the temporary dwelling continue to exist. If the property owner desires to continue the use of a temporary dwelling based on the repairs to or construction of a permanent dwelling beyond the time of the land use permit extension, he or she shall file a request for a temporary dwelling land use permit, which shall then be processed by the Zoning Administrator in the same manner as a new application.
6. A temporary dwelling shall be removed from the lot or parcel on which it was placed within thirty (30) days after the expiration of the land use permit for the temporary dwelling, and the lot or parcel shall be restored to its condition immediately prior to the placement of the temporary dwelling. Provided, however, this provision shall not require the removal of a travel trailer or recreational vehicle used as a temporary dwelling from the lot or parcel but shall require that the travel trailer or recreational vehicle no longer be used as a temporary dwelling.

### **Section 3.08 – Home Business**

While the Village of Empire recognizes that many residents feel the necessity to work at home, the Village also recognizes the rights of all residents to be free from actual or potential nuisance which may be caused by non-residential activities conducted in a residential district. The intent of this section is to provide standards to ensure home occupations are compatible with other allowed uses in residential districts, and thus to maintain and preserve the residential character of the neighborhood.

#### **1. Home Occupations**

- A. Home occupations are allowed in all zoning districts in which single-family dwellings are permitted as a matter of right, subject to the following standards:
- B. Home Occupations shall be operated in their entirety within the dwelling, within an attached garage or an accessory building.
- C. Home Occupations shall be conducted primarily by the person or persons occupying the premises as their principal residence. Not more than one (1) non-resident

person shall be working at the given premises to assist with the business including both non-resident employees and those working with the business on a contractual basis.

- D. Additions to a dwelling for the purpose of conducting a Home Occupation shall be of an architectural style that is compatible with the architecture of the dwelling and shall be designed so that the addition can be used for dwelling purposes if the home occupation is discontinued.
- E. Home Occupations shall be incidental and subordinate to the principal use of the dwelling for residential purposes and shall not detract from the residential character of the premises or neighborhood.
- F. Home Occupations shall not result in the creation of conditions that would constitute a nuisance to neighboring property owners and the Village as a whole. Any machinery, mechanical devices, or equipment employed in the conduct of a Home Occupation based business shall not generate noise, vibration, radiation, odor, glare, smoke, steam, or other conditions not typically associated with the use of the dwelling for residential purposes.
- G. Traffic and delivery or pickup of goods shall not exceed that normally created by residential uses.
- H. The outdoor storage of goods and/or materials of any kind is prohibited.
- I. There shall be no parking permitted within any setback areas.
- J. No process, chemicals, or materials shall be used which are contrary to any applicable state or federal laws.

## 2. **Termination, Extensions, Revisions, and Inspections**

- A. Upon written application by the owner, the Planning Commission may, for just cause, grant a time extension for compliance with the conditions of this Section. The extension can be for no more than one (1) year.
- B. Any Home Occupation shall be subject to periodic review by the Zoning Administrator.
- C. If the Zoning Administrator has reason to believe the property owner is in violation of this Ordinance, written notice of alleged violation(s) shall be sent to the operator of the home business. The operator shall be afforded the opportunity to appear at a public hearing before the Planning Commission to present his or her case. The Zoning Administrator (or citing official) will also be present at said hearing. The hearing notice procedures shall be the same as those for a special use permit approval (see **Section 6.02 - Uses Subject to Special Use Permit**).
- D. Following the public hearing, the decision of the Planning Commission shall be made in writing and shall be based on the findings of fact. Reasonable conditions may be imposed to prevent conflicts with other property uses or to assure compatibility with the standards of this ordinance. The Planning Commission shall have the authority to order a limit on the hours of operation, impose conditions of

operation or, if deemed necessary, order the complete termination of the activity.

- E. Proposed revisions or additions to a home occupation shall constitute a change of use and shall be subject to approval by the Zoning Administrator or by such other body given the necessary approval authority under this Ordinance.

### **Section 3.09 – Fences and Walls**

- A. A fence permit is required prior to the installation/construction of a man-made fence, except for fences listed in **Section 3.09.2**. Shrubs, bushes, or similar vegetation screens forming a barrier, in whole or in part, are not regulated by this Section, unless specifically addressed herein. Scrap wood, tires or similar materials shall not be used as a fence.
- B. Fences are allowed, in general, within any District subject to the following:
  - 1. Any stricter requirements as provided in other specific provisions in this Zoning Ordinance.
  - 2. Front yard fences shall be limited to four (4) feet in height at final grade with the front not extending beyond the lot line. Front yard fences shall possess transparency or “see through” character of not less than 50%.
  - 3. Side and rear yard fences shall be limited to six (6) feet in height at final grade and not extend beyond the lot line. Side yard fences, except on corner lots, shall be limited to four (4) feet in height at final grade from the front of a residence, commercial building, or other primary or accessory structure to the street.
  - 4. Posts or vertical supports shall be inside the fence with finished surface facing the adjacent property. Posts or vertical supports may extend approximately six (6) inches above the fence height.
  - 5. The provisions in the following Subsections:
    - A. A solid wall or fencing is to be located on the side and rear property lines of any site that abuts another Zoning District or land use.
    - B. For districts within which outdoor storage is allowed, such outdoor storage must be screened on all sides by a solid wall or fencing.
    - C. Public utility substations, where allowed, shall be screened on all sides by an earthen berm, solid wall or fencing, and landscaping in accordance with **Section 3.21**.
    - D. All fences in all zoning districts shall be well-maintained, kept in good condition and repaired as necessary.
    - E. The facade or outer face of fences (i.e., the fence facing an adjacent property) shall be the decorative side of the fence with posts, supports, etc. on the interior.
    - F. No fence, or other structure, shall obscure a clear line of sight at street, sidewalk and/or road intersections.
    - G. A fence consisting of barbed wire, electric charges, or sharp material is prohibited unless incorporated into a garden/agricultural fence or an underground pet containment fence.

- H. A front, side or rear yard fence enclosing trees, crops, garden plants or animals, where allowed, is permitted up to ten (10) feet, unless the fence violates another Section in this Zoning Ordinance. Fences over six (6) feet in height shall possess transparency at 50% and composed of open woven wire or comparable material.
- I. No side lot fence, gate or screen shall be placed closer than fifty (50) feet from the water's edge of South Bar Lake or the federal ordinary high-water mark of Lake Michigan.
- J. No fences are allowed on lakeshore parcels along the water's edge.

### **Section 3.09.2. Exceptions to Fencing Requirements**

- A. **Non-perimeter fences.** Fences as defined herein do not include non-perimeter fences, decorative structures, temporary, portable, construction-related barriers, and pool fences, which may be temporary, discontinuous structures or similar fences. Non-perimeter fences that represent or may represent a hazard to public safety are prohibited.
- B. **Buildings abutting property lines.** Required screening or fencing may be omitted along any lot line where a building wall exists immediately abutting the lot line.
- C. **Invisible pet fencing.** Pet fencing using buried electric barrier technologies are exempt from this Section.
- D. **Safety fencing.** Safety fences, permanent or temporary, e.g., surrounding swimming pools, excavations, and similar features shall be exempt if erected for safety purposes only.
- E. **Temporary fencing,** i.e., portable, snow, construction-related barriers, health compliant (e.g., Covid-19, etc.) fencing, and garden fences, etc. are exempt from this Section.
- F. **Garden fences.** Garden fences and fences erected for the keeping small animals are exempt from this Section.
- G. **Location adjustment.** Where property line fencing or screening is required, the location may be adjusted so the fencing may be constructed at or within the setback line, provided the areas between the fence and the property lines are landscaped, or in rural areas, retained in their natural vegetative state at the discretion of the Zoning Administrator.
- H. **Rear yard and corner lot fences.** Rear yard and corner lot fences abutting a neighbor's front yard in any Zoning District must comply with front yard standards and regulations.
- I. **Existing screening.** Any fence, screen, wall or hedge which does not conform to the provisions of this Section and which is legally existing at the effective date of this Section may be continued and maintained, provided there is no physical change other than necessary maintenance and repair in such fence, screen, wall, or hedge except as permitted in other requirements of this Section.
- J. **Planning Commission modification.** Any of the requirements of this Section may be waived or modified through Site Plan review/approval, provided the Planning Commission makes a written finding of fact that specifically identified characteristics of the site or its vicinity which

would make required fencing or screening unnecessary or ineffective, or where it would impair vision at a driveway or street intersection.

- K. **Zoning Board of Appeals.** The Zoning Board of Appeals may require or waive any fencing, screening, landscaping, or buffering requirements as may be provided for in this Section as a condition of a variance or other authorization in whatever manner necessary to achieve an identified public purpose. The Zoning Board of Appeals shall record the reason for the condition and clearly specify what is required in any approval granted.

### **Section 3.10 – Water Supply and Sewage Disposal Facilities**

All water supply and sanitary sewage disposal systems either public or private, for any building hereafter erected, altered or moved upon any premises shall be subject to compliance with District Health Department sanitary code requirements. Plans must be submitted to and approved by the responsible agencies. The written approval of such facilities by District Health Department shall be filed with the application for a Land Use Permit.

### **Section 3.11 – Outdoor Lighting**

1. All lighting in all districts, whether illuminating sites, parking areas, buildings, signs and/or other structures, or for security, including motion sensing lights, shall be downward directed, shielded, designed and directed away from all adjacent parcels and uses; and further shall not interfere with persons and vehicles using public streets, alleys and thoroughfares.
2. Lighting fixtures are to be of full cut-off design with horizontally aligned flush mounted (i.e., non-protruding) lens, directed on-site only, no more than twenty (20) feet in height and only utilize Sodium, yellow spectrum LED or other new lighting technologies.
3. The Planning Commission may permit taller or require shorter fixtures only when the Commission determines that unique conditions exist and where a waiver would:
  - a) reduce the number or size of light fixtures; and
  - b) not adversely impact neighboring properties and permit fixtures in proportion to height and bulk of nearby buildings and other fixtures. For commercial buildings, site lighting shall not exceed ten (10) foot candles as measured three (3) feet above ground surface directly under the fixture.
4. No blinking, flashing or other types of intermittent lighting, including changes in light intensity, brightness or color shall be permitted. Beacon lights are not permitted.
5. Security lighting (including motion sensing lights), temporary holiday lighting displays, construction lighting, and similar temporary lighting not constituting a nuisance shall be exempt from these lighting regulations.

### **Section 3.12 – Signs**

1. **Purpose.** This Section is intended to regulate the size, number, location, and manner of display of signs in the Village to carry out the following purposes:
  - i) To protect and further the health, safety and welfare of Village residents, property owners, and travelers caused by signs which obstruct vision, distract, disorient, or confuse drivers or pedestrians, or are improperly secured or constructed.

- ii) To conserve and enhance community character by reducing visual clutter which can arise due to excessive or unregulated signage, temporary signage, or other signage which is improperly located or unreasonably distracting.
- iii) To promote uniformity in the size, number and placement of signs within each zoning district.
- iv) To promote the economic viability of commercial areas by minimizing visual clutter and allowing for proper placement of signs to safely direct motorists to their destination; to allow businesses the opportunity to use the signage permitted to them to advertise their business and direct customers to their business.
- v) To promote the use of signs that are safe, aesthetically pleasing, compatible with their surroundings, and legible in the circumstances in which they are seen.
- vi) To carry out these purposes in a manner that is content neutral by regulating the size, number, location and other physical aspects of signs without respect to their content, except as the content may relate to the location of the sign for regulatory purposes or conveys information essential for safety purposes.
- vii) To respect the rights recognized by the courts for residents to use signage on their premises to express their viewpoints or personal messages, with additional opportunities during limited seasons, by regulating the number, size and location of signs, without reference to the message the occupant of the premises may choose to convey.
- viii) To recognize that signs with messages which change automatically by electronic or mechanical means by their nature pose a greater risk of motorist distraction due to the changing nature of the sign, message, or graphics, as opposed to a static sign, the distinction being similar to the distinction between a painting and a television set. It is recognized, however, that in limited sizes and locations, such signs serve a valuable purpose of providing up to date information, requiring a balancing of the impact of such signs with their benefits.
- ix) To recognize that directional signage and traffic control signs such as street signs, stop signs, signs within commercial or institutional sites which direct traffic or identify facilities for the disabled, address signs or which identify historic or public service sites, serve an important function of promoting traffic safety by avoiding driver confusion and promoting the safe flow of traffic, and allowing ready location in emergency situations. In addition, it is recognized that such signs are often placed by governmental entities that are not subject to local zoning.
- x) To require that signs of significant size and substantial construction obtain a permit to assure compliance with the ordinance and codes, while recognizing the administrative burden of requiring permits for certain small and non-permanent signs outweighs the benefit of prior permitting.

The regulations contained in this section involve a determination by the Village that the rights of sign owners to convey a message must be balanced against the public right to be free of signs which unreasonably compete for attention, distract drivers and pedestrians, or produce confusion. It is recognized that sign regulations must afford businesses a reasonable opportunity to communicate. It is also determined that, however, that oversized, projecting, distracting, clutter, or crowded signs can lead to pedestrian and driver confusion, disorientation, and

distraction and endanger the public health, safety and welfare. To lessen such adverse consequences, reasonable limitations and restrictions are appropriate with respect to the placement, construction, size, type, and design of signs based on the regulation, location, uses and availability of other means of communication.

**2. Definitions. See Article 2.**

**3. Permit Application.** The following application requirements shall apply to all signs requiring a permit pursuant to the provisions of this Ordinance.

- a) Application for a permit, on a form supplied by the Village of Empire, shall be required to erect, alter, or reconstruct a sign unless otherwise noted. The completed application, together with all plans and specifications, shall be submitted to the SEO. Approval shall not be given until the application complies with all provisions of this Ordinance. If the application is approved, a permit to erect, alter, relocate, or post the sign shall be issued.
- b) A non-refundable permit fee shall be submitted with the application. Fees for sign permits shall be established, from time to time, by resolution of the Village Council and shall be remitted to the Village.
- c) The application shall contain or have attached the following:
  - i) Name, address, and telephone number of the owner, where the sign is to be erected, and the owner of the sign.
  - ii) Location of building, structure, or lot where the sign is to be attached or erected.
  - iii) Position of the sign in relation to nearby buildings or structures.
  - iv) A sketch or scale drawing with the dimensions, specifications of the display area, method of construction, lighting, and if applicable, method of attachment to the building or ground.
  - v) Name of person, firm, or corporation erecting the sign.
  - vi) Any Leelanau County construction permit required and issued for the sign.
  - vii) Other details the SEO shall require to establish conformance with this Ordinance.
- d) Issuance of a sign permit in no way indicates any responsibility by the Village of Empire for the structural adequacy of a sign or the right to construct the sign.
- e) A sign permit shall be null and void if the sign has not been installed within ninety (90) business days from the approval date. The SEO may approve an extension of ninety (90) business days.
- f) Public service and non-profit agencies must apply for a permit as required by this Ordinance.
- g) Except for the signs authorized without a sign permit pursuant to Section 5, no sign shall

be erected or altered until approved by the SEO or authorized by the Village of Empire Planning Commission as part of an approved site plan. After approval, the required sign permit shall be issued by the SEO.

**4. General Provisions.** The following regulations shall apply to all signs:

- a) Signs must be constructed of durable materials, maintained in good condition, and shall not be allowed to become dilapidated.
- b) When a business is abandoned, any sign except the street address must be removed within thirty (30) business days. A business shall be considered abandoned if the Zoning Administrator determines that it has been suspended or halted for a continuous period of one (1) year.
- c) Temporary signs are to be removed fifteen (15) business days following abandonment or obsolescence as determined by the SEO.

**5. Signs Not Requiring a Sign Permit.** The following signs may be placed in any zoning district without a sign permit, provided such signs comply with all applicable federal or state law or regulation and are located to not cause a nuisance or safety hazard;

- a) Four (4) temporary signs per property not to exceed six (6) square feet each of the sign surface.
- b) Two (2) temporary flags on a pole or staff less than 8 ft where the display area of the flag does not exceed fifteen (15) square feet each.
- c) Two (2) flags on a permanent pole or staff that is greater than eight (8) feet.
- d) Signs erected, required or approved by the state, county, or village agencies when necessary to give proper directions or to safeguard the public.
- e) Accessory signs erected by any organization, person, firm, or corporation that is needed to warn the public of dangerous conditions and unusual hazards including but not limited to road hazards, high voltage, fire danger explosives, and severe visibility.
- f) Signs posted near property boundaries provided the sign surface does not exceed the maximum size of one (1) square foot.
- g) Signs marking a historically significant place, building, or area when sanctioned by a national, state, township, village, or local historical organization, provided the sign surface does not exceed the maximum allowed size of sixteen (16) square feet or the maximum size allowed in the zoning district whichever is less.
- h) Signs required by federal or state agencies in connection with federal or state grant programs that have been approved in conjunction with a valid site plan or land use permit.

**5.1 Signs Not Requiring a Sign in the Gateway Corridor Only.** The following signs are allowed only in the Gateway Corridor district without a sign permit, provided such signs comply with all applicable federal and state law or regulation and are located to not cause a nuisance or safety hazard:

- a) One (1) temporary feather flag not to exceed 25 square feet each
- b) A limit of six (6) temporary signs or flags may be placed per property.

**6. Prohibited Signs.** The following signs are prohibited:

- a) A sign not expressly permitted is prohibited.
- b) Signs imitating warning signals are prohibited. No sign shall display intermittent lights resembling the flashing lights customarily used in traffic signals or in police, fire, ambulance or rescue vehicles.
- c) Revolving, moving, animated, mechanical, electronic simulated motion, and flashing signs are prohibited, except for rotating/revolving barbershop poles.
- d) Signs within a village street or highway right-of-way are prohibited. No signs (except those established and maintained by the village, township, county, state or federal governments) are to be located, projected onto, or located overhead within a public right-of-way or dedicated public easement, unless the sign has been issued a permit by the agency having jurisdiction over that right-of-way.
- e) Signs higher than eight (8) feet, measured from ground level are prohibited, except for flags, projecting signs and signs fully attached to the face of a building.
- f) A sign which is part of a canopy or an awning.
- g) Stake or wire signs, other than those allowed in Section 5: Signs Not Requiring a Sign Permit.
- h) Bench Signs.
- i) Roof Signs provided that Mansard roof signs shall be considered as wall signs.

**7. Alteration or re-establishment of nonconforming signs.** Any existing sign which, on the effective date of this Ordinance, does not at that time comply with all provisions of this Ordinance and any amendments shall not be changed to another type of sign which is not in compliance with this Ordinance.

**8. Signs Allowed in Zoning Districts. Sign Regulation by Zoning District.**

- a) **General Residential (GR), Mixed Residential (MR), and Village Residential (VR) Districts.** Only signs or flags not requiring a permit shall be allowed.
- b) **Front Street District (FS) and Light Industrial (LI) Districts.** Any sign or flag not requiring a permit, permitted signs in accordance with Section 9.
- c) **Gateway Corridor (GC).** Any sign or flag not requiring a permit and permitted signs in accordance with Section 9.
- d) **Recreation/Conservation (RC) District.** Any sign not requiring a permit. Also, for nature areas consisting of over thirty (30) acres in the R/C District, may have on the property not more than two (2) identifying signs, each not to exceed twelve (12) square feet and not more than eight (8) feet in height. One (1) thirty-two (32) foot kiosk is also

allowed with a height limitation of eight (8) feet.

- e) **Planned Unit Developments (PUD).** Any sign or flag not requiring a permit and for commercial uses within a PUD, permitted signs in accordance with Section 9.

**9. Permitted Sign Types, Allowable Dimensions and Specific Requirements**

- a) **Corner Lots.** Signs may be placed facing both public streets on corner lots within the Gateway Corridor (GC) and Front Street Corridor (FSC), Light Industrial (LI) District, and Planned Unit Development (PUD) Districts. All other requirements of this Ordinance must be met.

Sign Type	Max Sign Surface Area	Other Regulations
Either freestanding or marquee sign	24 square feet	Number of freestanding signs shall not exceed 1 sign / 100-foot lot in the Gateway Corridor or Front Street district. Maximum height allowed is 8 feet.
Identification sign	4 square feet	
Illuminated sign	24 square feet	These signs must comply with the outdoor lighting ordinances.
Projecting sign	20 square feet	Maximum projection allowed is 5 feet from a building; not to extend over a public sidewalk, street, or alley; shall not exceed to height of a building's roof line; and with a maximum height of 15 feet.
Portable sign	2 feet wide by 4 feet high. Signs on wheels 4 feet high by 8 feet high	If intended to direct attention to a specific event, may be displayed for up to 2 weeks prior, and must be removed within 3 days after the event.
Banner sign	24 square feet	May be displayed 2 weeks prior to an event and removed within 3 days following an event.
Wall sign	32 square feet	1 sign / building. If multiple businesses are within a building, they shall share the total 32 square feet.
Alley sign	4 square feet	1 sign / street façade. If multiple businesses are within a building, they shall share the total 4 square feet.
Multiple business / plaza entrance sign	48 square feet	All businesses with a common structure will share a common entrance sign.
Individual businesses within a multiple business building	1 square foot / lineal feet building length	The total lineal street frontage divided by the number of business units within a building, not to exceed 12 square feet / business. Signs shall comply with all other provisions of this Ordinance.

10. **Administration; Annual Inspection; Enforcement; Sanctions.** The SEO, or designee shall administer and enforce the provisions of this Ordinance. The SEO shall create an inventory of non-temporary signs in the FS and Gateway Districts and may inspect signs yearly. In the case of a sign that poses an immediate danger to the public health or safety, the sign shall be removed by the Village of its employees. Neither the Village nor any of its employees shall be held liable for any damage to the sign or building when a sign is removed under this Ordinance.

### Section 3.13 – Permitted Uses (Towers)

1. **Purpose.** This Section is intended to allow for communication towers and ancillary facilities within Village of Empire in conformance with the Michigan Zoning Enabling Act, P.A. 143 of 2012, MCL 125.3514, as amended; the Federal Communications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996); 47 U.S.C. 151, as amended; the federal Middle Class Tax Relief and Job Creation Act (i.e., the Spectrum Act) of 2012, Title VI, Subtitle D, Section 6409; associated administrative rules<sup>1</sup> and state and federal court rulings. Any terms used in this Article but not specifically defined within this Ordinance shall be used as defined by state and federal statutes, rules and court findings.

The goals of this Ordinance are to protect residential areas and land uses from potential adverse impacts of towers and antennas; minimize the total number of towers throughout the community; encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers; encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening and innovative camouflaging techniques; consider the public health and safety of communication towers, and avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures. In furtherance of these goals, the Village of Empire shall give due consideration to the Village of Empire Zoning Ordinance, Zoning Map, and existing land uses and environmentally sensitive areas in approving sites for the location of towers and antennas.

2. **Applicability.**
- A. **New Towers and Antennas.** All new towers or antennas in the Village of Empire shall be subject to these regulations.
  - B. **Amateur Radio Station Operators/Receive Only Antennas.** This Ordinance shall not govern any tower, or the installation of any antenna, that is owned and operated by a federally-licensed amateur radio station, Ham operator, or antenna that is used exclusively for signal reception.
  - C. **Pre-existing Towers or Antennas.** Pre-existing towers and preexisting antennas shall not be required to meet the requirements of this Ordinance.
3. **Permit Required.** No tower or antenna shall be installed unless a permit is first obtained by the owner or his agent from the Village of Empire Planning Commission. The following shall be required as part of the application:

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12) <sup>1</sup> Federal Communications Commission rule, 47 C.F.R., Part 1 and Part 17, Federal Communications Commission Report and Order, October 17, 2014 (FCC14-153), Appendix B.

- A. A scaled site plan clearly indicating the location, type and height of the proposed tower and appurtenant equipment, any proposed and existing structures, adjacent land uses and structures, adjacent roadways, on-site parking and driveways, tower and equipment setbacks from property lines, and other information deemed by the Zoning Administrator to be necessary to assess compliance with this Ordinance;
  - B. The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties and un-platted residentially zoned properties;
  - C. The separation distance from other towers, antennas or sites approved for towers or antennas, that are either within the jurisdiction of Village of Empire, or within three miles of the border thereof, including specific information about the location, height, and design of each tower;
  - D. Landscape plan showing specific native plant materials;
  - E. Method of fencing, including location, materials and finished color and, if applicable, vegetative screening;
  - F. Description of compliance with all relevant sections of this Wireless Telecommunication Towers and Antennas Ordinance.
4. **Communication Towers.** The following standards will be required for all Communication Tower Facilities:
- A. Communication towers shall be located centrally on a contiguous parcel and setback shall be not less than two (2) times the height of the tower measured from the base of said tower to all points on each property line or leased area boundary.
  - B. All guy wires/cables and anchors shall meet the zoning setback standards of the district.
  - C. No antenna or similar sending/receiving devices appended to the tower, following its approved construction, shall be permitted if it exceeds the engineered design capacity of the tower thereby jeopardizing the tower's structural integrity.
  - D. The proposed height meets FCC and/or FAA regulations.
  - E. Towers must be equipped with devices to prevent unauthorized climbing or the base enclosed by a fence to prevent unauthorized access to the tower.
  - F. All reasonable measures are taken to blend the tower into the landscape, including greenbelt planting and/or screening, painting and/or concealing the tower in a "stealth" design.
  - G. All new towers shall be constructed in such a manner so as to provide collocation of at least five (5) additional antennae. Depending on tower height, additional collocated antennae may be required by the Village. These antennae sites shall be made available at a fair market value to third parties on a need for basis to anyone wanting to mount commercial communication equipment. No new construction will be approved, unless it can be demonstrated that space on existing towers is unavailable or unsuitable.
  - H. Protective fencing and screening may be required to be placed around all guy wire anchor points as appropriate to the site.

- I. All communication tower facilities shall be removed and the site restored to its original condition by the property owner or lessee within ninety (90) days of being abandoned (i.e., no longer used) as determined by the Zoning Administrator.
  - J. The proposed height meets FCC and FAA regulations so that the tower does not have lights, or the Planning Commission makes a finding it is more desirable to have a single taller tower to avoid multiple unlit towers.
  - K. All towers lighted and unlighted shall not be located closer than two (2) miles from another tower.
5. **Tower Design.** Towers shall 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. Where an antenna is installed on a structure other than a tower, the antenna and appurtenant 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.
6. **Signs.** No advertising material or signage other than warning or equipment information shall be allowed on any antenna or tower. This prohibition shall include the attachment to an antenna or tower of any flag, decorative sign, streamers, pennants, ribbons, spinners or waving, fluttering or revolving devices, but not including weather devices.
7. **Lighting.** Towers shall not be artificially illuminated unless required by the FAA or any other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding area.
8. **Fencing.** A tower shall be enclosed by security fencing not less than six (6) feet in height and secured so that it is not accessible by the general public. Fence design, materials and colors shall reflect the character of the surrounding area.
9. **Landscaping.** A buffer of native plant materials to effectively screen the tower compound from public view and from adjacent properties shall be provided. The minimum buffer shall consist of a landscaped strip at least fifteen (15) feet in width outside the perimeter of the tower compound. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived by the Village Council. Existing mature tree growth and natural land forms shall be preserved to the maximum extent possible. In some cases, such as tower sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.
10. **Annual Report.** Applicant will provide the Village of Empire Zoning Administrator with an annual report identifying owner and co-locators, due by January 1<sup>st</sup> of each calendar year.
11. **Appurtenant Equipment and Buildings.** The equipment cabinet or structure used in association with an antenna may be located on a roof provided that such equipment or structure is placed as unobtrusively as possible. Equipment storage buildings or cabinets shall comply with all applicable construction code and zoning requirements.
12. **Antennas mounted on utility poles, light poles or towers.** The equipment cabinet or structure used in association with an antenna shall be sited in accordance with the development standards of the underlying zoning district. Equipment cabinets or structures shall be screened from view by a native evergreen hedge or other suitable native vegetation, except where the use of non-vegetative screening would better reflect and complement the

architectural character of the surrounding neighborhood.

13. **Permitted Use.** Wireless communications equipment is a permitted use in the Industrial District if the following requirements are met:

- a) The wireless communications equipment will be collocated on an existing wireless communications support structure or in an existing equipment compound.
- b) The existing wireless communications support structure or existing equipment compound is compliance with the Village of Empire Zoning Ordinance.
- c) The proposed collocation will not do any of the following:
  - (i) Increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.
  - (ii) Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.
  - (iii) Increase the area of the existing equipment compound to greater than 2,500 square feet.
- d) The proposed collocation complies with the terms and conditions of any previous final approval of the wireless communications support structure or equipment compound by the Village of Empire Planning Commission.
- e) This Section shall not be interpreted in any way to regulate Michigan State Police radio or 911 communication towers and associated facilities.

15. **Special Use Type 1**

If wireless communications equipment is collocated and the structure is in compliance with zoning, but a) increases the height of the structure more than 20 feet or 10% (whichever is greater); b) increases width more than necessary; c) increases the existing compound area over 2,500 square feet, and d) does not comply with previous approval, the application may be handled as a special use permit.

16. **Special Use Type 1 Requirements:**

An application for a communication tower and/or associated facilities shall include:

- a) a site plan in accordance with Article 5: Site Plan review of the Village of Empire Zoning Ordinance; and
- b) other information as required by the Planning Commission.

17. **Special Use Type 1 Review Process:**

- a) The Zoning Administrator shall within fourteen (14) business days determine if a Type 1 Special Use permit communication tower and/or associated facilities application is administratively complete pursuant to this Ordinance. The results of

such assessment by the Zoning Administrator shall be communicated in writing to the applicant within said 14 business days. A Type 1 special use permit application not determined to be administratively complete or administratively incomplete within said 14 business days of the application being received shall automatically be deemed as administratively complete.

- b) Fee for Type 1 Special Use permit must be paid in accordance with the Village of Empire Fee Schedule. This fee does not preclude any other required fees for Planning Commission review of this matter, e.g., meeting fees, etc.
- c) Planning Commission action on a Type 1 Special Use permit application for wireless communications (i.e., approve, deny, approve with conditions) shall be taken within sixty (60) days of a complete application and be supported by substantial evidence. If such action has not taken place within sixty (60) days, the Type 1 Special Use permit shall be considered approved as submitted. Any conditions of approval must directly relate to the existing zoning ordinance, other local ordinances, and applicable state and federal law.

**18. Special Use Type 2**

If wireless communications equipment is not being collocated on an existing structure, the communications tower and/or associated facilities application shall be handled as a Type 2 special use permit.

**19. Special Use Type 2 Requirements:**

An application for a communication tower and/or associated facilities shall include:

- a) a site plan in accordance with Article 5: Site Plan Review of the Village of Empire Zoning Ordinance; and
- b) other information as required by the Planning Commission.

**20. Special Use Type 2 Review Process**

- a) The Zoning Administrator shall within fourteen (14) business days determine if a Type 2 Special Use Permit communication tower and/or associated facilities application is administratively complete pursuant to this Ordinance. The results of such assessment by the Zoning Administrator shall be communicated in writing to the applicant within said 14 business days. A Type 2 special use permit application not determined to be administratively complete or administratively incomplete within said 14 business days of the application being received shall automatically be deemed as administratively complete.
- b) Fee for Type 2 Special Use permit must be paid in accordance with the Village of Empire Fee Schedule. This fee does not preclude any other required fees for Village review of this matter, e.g., meeting fees, etc.
- c) Planning Commission action on a Type 2 Special Use permit application for wireless communications (i.e., approve, deny, approve with conditions) shall be taken within sixty (60) days of a complete application and be supported by substantial evidence. If such action has not taken place within sixty (60) days, the Type 2 special use

permit shall be considered approved as submitted. Any conditions of approval must directly relate to the existing zoning ordinance, other local ordinances, and applicable state and federal law.

21. **Removal of Abandoned Antennas and Towers.** An 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 remove the same within ninety (90) days of receipt of notice from Village of Empire notifying the owner of such abandonment. 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.

22. **Nonconforming Uses**

a) **No Expansion of Nonconforming Use.** Towers that are constructed, and antennas that are installed, in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

b) **Pre-existing Towers.** Pre-existing towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such pre-existing towers. New construction other than routine maintenance on a pre-existing tower shall comply with the requirements of this Ordinance.

**Section 3.14 - Antenna Co-location on an Existing Tower or Structure**

1. No antenna or similar sending and receiving devices appended to the tower, following its approved construction, shall be permitted if it exceeds the engineered design capacity of the tower thereby jeopardizing the tower's structural integrity.
2. The installation and/or operation of the above mentioned, antennas or facilities shall not interfere with normal radio/television reception in the area. In the event interference occurs, it shall be the sole responsibility of the owner to rectify the situation with the parties involved.
3. No antenna or similar sending and receiving devices appended to the tower or structure shall increase the overall height of the tower or structure by more than ten (10) feet.

**Section 3.15 – Non-Commercial Wind Turbine Generators**

1. Non-commercial wind turbine generators (WTG) and anemometer towers erected to a non-commercial wind turbine generator may be located in any district, provided the WTG or anemometer tower is setback from the property line a distance at least equal to the total height of the WTG or anemometer tower.
2. The minimum site area for a non-commercial wind turbine generator or anemometer tower shall be two (2) acres.

### **Section 3.16 – Off Street Parking Standards**

Off-street parking space with adequate access to all spaces shall be provided and maintained in all zoning districts at the time of erection or alteration of any main building that is adequate for parking, loading and unloading of vehicles according to the requirements listed below.

#### **Section 3.16.1 Off Street Parking Requirements**

1. Parking for other than residential use shall be either on the same lot or within three hundred (300) feet of the building it is intended to serve, measured from the nearest point of the building to the nearest point of the off-street parking lot.
2. Residential off-street parking space shall consist of a parking strip, driveway, garage or any combination thereof located on the premises they are intended to serve. In a residential district, a licensed commercial vehicle may be parked provided it is owned or operated by someone residing on the premises.
3. A minimum of one hundred sixty-two (162) square feet shall comprise one (1) vehicular parking space and shall not be less than nine (9) feet by eighteen (18) feet.
4. The computation of the floor area of buildings for purposes of determining the applicable parking requirements shall use the outside perimeter of the principal building, but shall exclude basements, cellars, or attics where these areas are used for storage or utilities. In the case of a single story structure, the floor area may be reduced by ten (10) percent to accommodate storage or utilities.
5. Adequate area must be provided for snow piling and on-site drainage. Designation of parking areas must be clearly identifiable for use by the public.
6. Two (2) or more buildings or uses may collectively provide the required off-street parking. In which case the required number of parking spaces for the individual uses may be reduced by up to twenty-five (25%) if a signed agreement is provided by the property owners.
7. Parking Lot Deferment: Where the property owner can demonstrate that the required amount of parking is excessive, the Planning Commission may approve a smaller parking area. Area of sufficient size to meet the parking space requirements of this Article shall be retained as open space, and the owner shall agree to construct the additional parking at the direction of the Planning Commission based on observed usage within one (1) year of being informed of such request in writing by the Zoning Administrator. The site plan shall note the area where parking is being deferred, including dimensions and dotted parking lot layout. Any required landscaping placed in this area shall be relocated when the parking area is expanded.
8. In order to minimize excessive areas of parking, which may be unsightly and contribute to high rates of storm water runoff, exceeding the minimum parking space requirements by greater than ten percent (10%) shall not be allowed, except as approved by the Planning Commission. In granting such additional space, the Planning Commission shall determine that such parking will be required, based on documented evidence, to accommodate the use on a typical day.
9. In case of a use not specifically mentioned, the requirements of off-street parking facilities shall be the same as for the most similar use listed.

10. Vehicle Stacking Space: Stacking spaces required for vehicles waiting to access service windows, pumps, pedestals or other service facilities shall be dimensioned to be twenty (20) feet by ten (10) feet per space, but shall not include the space vehicles actually use at the time of service. Where a use provides a drive through or similar service, but is not within use categories for which specific standards are provided, the Planning Commission may require a minimum number of stacking spaces which are equivalent to the number required for a use which the Planning Commission determines to be most similar.
11. For each dwelling, business, commercial, industrial, or similar building hereafter erected or altered, and located on a public highway in the Village, including buildings or structures used principally as a place of public assembly, there shall be provided and maintained suitable off street parking in accordance with the following schedule:
  - A. Residential Uses: Two (2) parking spaces per dwelling unit.
  - B. Commercial, Service and Office Uses: For Lots of 12,000 Square feet or less, follow Residential Guidelines. For those developments with a combined square feet footprint of above 12,000 square feet: Two (2) parking spaces per 1,000 square foot of gross floor area. Maximum five (5) parking spaces per 1,000 square feet of gross floor area.
  - C. Industrial Uses: one parking space for every 1,000 square foot of gross floor area.
  - D. The Planning Commission shall determine the required parking spaces not specified in this section. Relief of the one parking places will be given for each bicycle rack that is provided.

### **Section 3.17 - Access Controls**

1. Commercial curb cuts and driveways shall be located only upon the approval of the Zoning Administrator, Village of Empire or Michigan Department of Transportation (depending on the road or street being accessed) and as required by law; provided, however, such approval shall not be given where such curb cuts and driveways shall cause an unreasonable increase in traffic hazards, including but not limited to allowing adequate sight distance for ingress and egress.
  - A. All plans for structures to be erected, altered, moved or reconstructed, and use of premises within the Village shall contain a plan for the proposed driveway access to the premises. Said plan shall be approved by the Zoning Administrator prior to the issuance of a Land Use Permit. No such plan shall be approved unless such driveway access is onto a dedicated public street or an approved private road. Driveways shall, at a minimum, meet the following standards:
    - 1) Culverts shall be installed in line with and on the same grade as the road ditch.
    - 2) Drives shall enter perpendicular to the existing public street.
    - 3) No portion of the driveway entrance within the right-of-way shall have a grade of greater than ten percent (10%) (1-foot vertical rise in 10 feet of horizontal distance).

- 4) The driveway shall meet any applicable clear vision standards of the Village or MDOT, depending on the street or road being accessed.
    - 5) Driveways shall be designed to minimize runoff and erosion.
  - B. No more than one driveway shall be allowed per parcel, except on a corner lot where need can be demonstrated, or on lots with one thousand feet of frontage or greater.
  - C. Shared driveways are encouraged.
  - D. New driveways shall align with existing or planned driveways, crossovers, turn lanes or other access features. This shall only be required if the resulting alignment provides safe access and if all requirements of this Ordinance and any standards of the Village, County, or MDOT, as appropriate, are met.
  - E. The location of new driveways shall conform with road improvement plans or corridor plans that have been adopted by the Village, County, or MDOT.
2. No access to a nonresidential property shall cross residentially-zoned property.
  3. All parcels or lots hereinafter created in the Village shall have direct access to a public street, alley, or an approved private road, which provides safe, convenient access for serving fire protection and to any required off-street parking areas.

### **Section 3.18 - Streets, Private Roads and Driveways**

1. Where a public street, private road or right-of-way easement in existence prior to the effective date of this provision has no recorded width, the width will be considered to be twenty (20) feet for the purpose of establishing setbacks.
2. No person, firm or corporation shall hereafter divide any land without providing access to such divided lands by public right-of-way or permanent private easements.
3. No fence shall be approved which constitutes a fire hazard by itself or which restricts access by the fire department to multiple properties, or which will constitute a hazard to vehicular or pedestrian traffic.
4. All public streets, private roads, alleys and private driveways created after the effective date of this provision shall meet the following dimensions:
  - A. The right-of-way width shall be 50 feet of all public streets and private roads in residential and commercial districts.
  - B. The paved width shall be 20 feet of all public streets and private roads in residential districts and 30 feet in commercial districts
  - C. The green space at the side of a public street or private road shall be a minimum of 4 feet wide.
  - D. In all districts the right-of-way width of an alley shall be 20 feet, and the width of the paved portion of said alley shall be 12 feet.

- E. Private driveways shall be at least twelve (12) feet wide to reduce fire hazard and to facilitate access to all dwellings by the fire department.
5. Private roads with only one connection to a county road, Village Street, state highway or an approved private road meeting the requirements of this Ordinance shall not be longer than one thousand (1,000) feet.
6. No private road shall serve more than sixteen (16) lots without two (2) points of access to another public road or street, or to an approved private road.
7. A private driveway shall be no longer than one thousand (1,000) feet and serve no more than 3 lots, parcels or site condominium units.
8. There shall be a green space between the paved portion of a street and the sidewalk which is at least four (4) feet in width. Trees shall be planted within the green space. Such trees shall be non-invasive deciduous trees and shall be planted every twenty (20) feet minimum. Such trees shall, at the time of planting, have minimum caliper of three (3) inches and a minimum height of fifteen (15) feet.
9. All public streets, private roads, alleys and private driveways shall be constructed in accordance with the construction specifications adopted from time to time by the Village Council.

### **Section 3.19 – Sidewalks**

1. All plans for new development within the MR, FS, GC Districts and any PUD development must include provisions for the construction of sidewalks, which shall be constructed at the time streets and utilities are constructed unless approved within a later development phase within a PUD pursuant to Section 7.08.5.C.3.
2. Sidewalks may or may not be placed parallel to the road or street used for vehicular travel, but should provide connection to facilities such as schools, parks, shopping and any adjoining public trails. All sidewalks shall be connected to existing or planned streets and pedestrian or bicycle pathways in the area.
3. Sidewalks shall be constructed on both sides of a street where the abutting lots are less than one hundred (100) feet in width.
4. In order to ensure public safety, special measures, such as crosswalks, crossing signals and other such facilities may be required in the vicinity of uses which generate a considerable amount of pedestrian traffic as determined by the Zoning Administrator, Planning Commission or Village Council.
5. In order to facilitate pedestrian access from roads to schools, parks, recreational trails, play areas or nearby roads to new subdivisions or shopping areas, the dedication of perpetual unobstructed easements at least twenty (20) feet wide shall be required by the Planning Commission. In heavy traffic areas, the Planning Commission shall require the construction by the Applicant of sidewalks on such easements.
6. In instances where sidewalk construction in the MR, FS, GC, and PUD Districts will not yet

connect to an existing sidewalk or sidewalk network (i.e., no points of connection are currently possible) the Planning Commission may at its discretion require the dedication of easements for future construction and determine if funds should be placed in an escrow account to cover the future sidewalk construction.

7. The proposed sidewalk location shall be delineated on any site plan required by this Ordinance for the MR, FS, GC, and PUD Districts, along with easement width, walk dimensions, materials and construction timetable.
8. All sidewalks shall be constructed in accordance with the construction specifications adopted from time to time by the Village Council.

### **Section 3.20 - Grading and Filling**

In order to protect adjacent properties, public streets, public watercourses, and to provide for adequate drainage of surface water, the following rules shall apply to all construction activities requiring permits pursuant to this Ordinance.

1. **Flow Restrictions.** The final grade surface of ground areas surrounding a building or structure shall be designed and landscaped such that surface water flows away from the building or structure and is managed in a manner which avoids: Increased flow onto adjacent properties or public roads, the erosion or filling of a roadside ditch, the blockage of a public watercourse or the creation of standing water over a private sewage disposal drainage field.
2. **Elevation Restrictions.** Filling a parcel of land with earth or other materials to an elevation above the established grade of adjacent developed land is prohibited without the expressed written approval of the Planning Commission who shall first consult the Village Engineer and the County Drain Commissioner.

### **Section 3.21 – Landscaping**

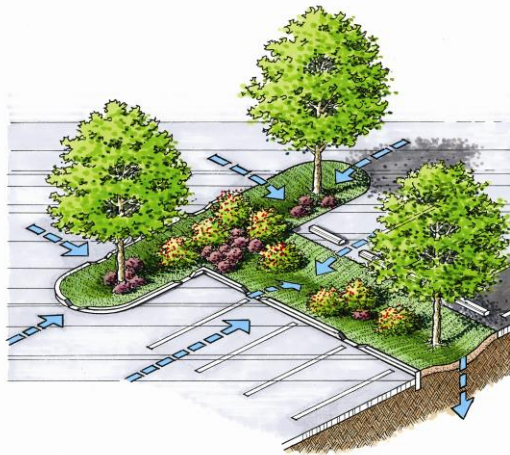
Where landscaping is required by this Ordinance it shall conform to the following standards:

1. **Front Yard Landscaping in Light Industrial Districts.** A strip of land or landscape buffer, at least ten (10) feet wide abutting the right-of-way in the front yard shall be maintained in an unobstructed fashion except for required landscape materials in the LI districts.
  - A. One canopy tree, a minimum of 3” caliper in size, for each twenty (20) linear feet and a minimum of fifteen (15) feet in height, or fraction thereof, shall be located within this landscaped area in such a manner so as not to create a vehicular sight-distance obstruction. Commission recommends planting noninvasive deciduous trees.
2. **Intensive Land Uses.** When the Planning Commission determines that, through generation of dust or noise, a development is likely to have a greater than normal impact on neighboring parcels or the general public than the typical uses permitted by right in the district, and that there is a need to provide a greater noise or dust barrier, or screening, so that said development does not have such an adverse impact on neighboring properties or the general public, a solid barrier may be required by the planning Commission. Such a barrier shall be 6 (six) feet or more in height as measured on the side of the proposed barrier having the higher grade, and shall be preferably constructed of natural materials e.g.

evergreen shrubs or bushes. Man made materials may also be used with the prior approval of the Planning Commission.

3. **Parking and Loading Areas.** All off-street parking areas shall be drained so as to prevent drainage onto abutting properties. No more than 50 percent of the required parking area shall be hard surfaced with concrete or asphalt paving. The unpaved parking area shall be maintained in lawn, gravel, or crushed stone and landscaped according to the same standards as the hard surfaced parking areas.

The intent of this provision is to limit impervious surface area and reduce storm water run-off retention needs. Off-street storage areas shall not be surfaced with impervious materials except as approved by the Planning Commission. Loading areas shall be fenced and screened from adjacent properties.



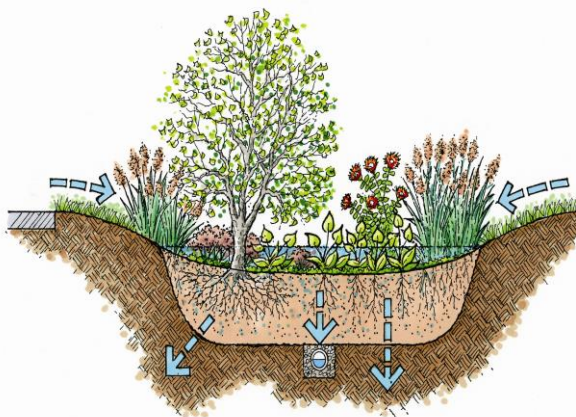
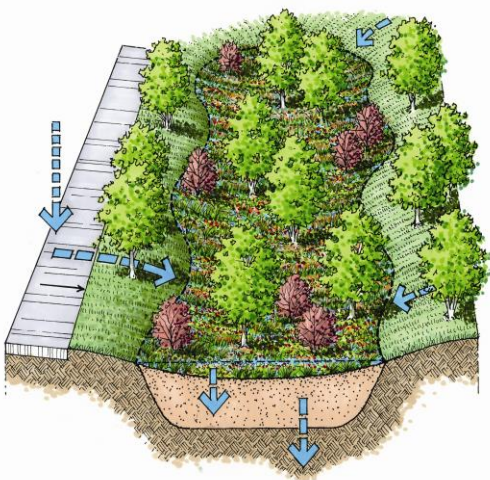
For parking lots of 5 parking spaces or more, a canopy tree must be planted for each multiple of 5. This is in addition to greenbelt and buffering requirements. Also, required is a minimum of 60 sq ft landscaped area of at least 6 feet wide into which the canopy tree must be planted. In parking lots of more than 10 spaces the landscaping is to be dispersed throughout the parking lot "in order to break up large expanses of impervious surface. All landscaping areas are to be free of rolled concrete curbs and be engineered in such a way as all stormwater is to be directed to the landscaped areas thus addressing run-off retention needs. The Planning Commission requires that the property owner submit a parking lot plan that shows, among other things, drainage and landscaping.

4. **Site Landscaping.** In addition to any landscape greenbelt and/or parking lot landscaping required by this Section, ten (10) percent of the site area, of any commercial development, public land use or PUD, excluding existing thoroughfare right-of-way, shall be landscaped.
  - A. Areas used for storm drainage purposes, such as unfenced drainage courses or retention areas in front or side yards, may be included as a portion of the required landscaped area.
  - B. Whenever it is deemed necessary by the Planning Commission to protect neighboring properties and/or the general public health, safety and welfare, the Planning Commission may require the installation of bioretention basins,

biodetention basins, and/or biodetention swales as follows:

- 1) **Bioretention and Biodetention Basins** - Bioretention and Biodetention areas are shallow depressions with suitable natural soils and vegetation that retain, treat and filter water. Sometimes the basins are constructed by replacing unsuitable soil with soil designed to allow more infiltration to the ground water system. These basins are designed to hold water to a maximum depth of 6 to 12 inches, the effective depth for vegetation to remove sediment and nutrients. Biodetention basins have an outlet for release of surface water; bioretention basins have no such outlet and hold runoff.

The most important distinction between these basins and conventional basins is that they mimic the natural hydrologic cycle by holding runoff long enough to allow nutrient and sediment removal, filtration and evaporation. These systems can also provide wildlife habitat, which increases interest and acceptance, especially in residential projects. Bioretention and biodetention basins may not be appropriate for significant quantities of sediment and nutrients that will overload them. In such situations, some type of source control (e.g., streetsweeping) should be incorporated to ensure effectiveness.



- 2) **Biodetention Swales** – Biodetention swales are conveyance systems that can complement bioretention and biodetention basins. These shallow vegetated swales are designed with a very flat slope, usually less than 0.5%, to increase retention time: this maximizes filtration and percolation. Unlike conventional conveyance systems, water and nutrients percolate into the ground prior to reaching the bioretention basin. In many cases, it is important to manage sediment quantity flowing into the swale to prolong its life.

5. **Landscape Elements.** The following minimum standards shall apply to any required landscape elements:

- A. Plant materials and grasses shall be of species and varieties which are generally indigenous to the area, and shall be free of insects and diseases, hardy to the climate, conform to the current minimum standard of the American Association of Nurserymen, and shall have proof of any required governmental regulations and/or

inspections.

- B. A mixture of plant material, such as evergreen, deciduous trees and shrubs, may be required by the Planning Commission as a protective measure against insect and disease infestation. A limited mixture of hardy species may be required by the Planning Commission rather than a large quantity of different species, in order to produce a more cohesive design and to avoid a disorderly appearing arrangement.
- C. A landscape buffer may include the use of an earthen berm to a maximum height of three (3) feet. Berms shall be constructed with slopes not to exceed a 1:3 gradient with side slopes designed and planted to prevent erosion, and with a rounded surface a minimum of two (2) feet in width at the highest point of the berm, extending the length of the berm. Berm slopes shall be protected with sod, seed, shrubs or other forms of natural ground cover.
- D. Existing Trees:
  - 1) For ecological and aesthetic reasons, it is desirable to maintain and increase the tree coverage within the Village. If existing plant material is labeled "To Remain" on site plans by the applicant or required by the Village, protective techniques, such as, but not limited to, fencing or barriers placed at the drip line around the perimeter of the plant material shall be installed during construction. No vehicle or other construction equipment shall be parked or stored within the drip line of any plant material intended to be saved. Other protective techniques may be used provided such techniques are approved by the Village.
  - 2) In the event that healthy trees which are used to meet the minimum requirements of this Ordinance or those labeled to remain are cut down, destroyed, damaged, or excavated at the drip line, as determined by the Village, the Contractor shall replace such trees on a caliper inch per caliper inch basis. A minimum size of replacement trees shall be 3" caliper for deciduous trees and a height of 6 feet for evergreen trees.

Example: If an 18" caliper tree is mistakenly cut down, the applicant/contractor shall replace it with trees a minimum of 3" caliper, totaling 18 inches of caliper, such as six trees of 3" caliper size. Such replacement may be planted off site, as determined by the Planning Commission.
- E. All landscaping required by this Ordinance shall be planted prior to obtaining a Certificate of Occupancy, or within eight (8) months of the issuance of a Certificate of Occupancy if, in the opinion of the Zoning Administrator, planting is limited due to seasonal weather prior to occupancy. A performance guarantee may also be secured pursuant to **Section 8.06** for the amount of the cost of landscaping which is to be released only after the requirements of this Section are completed.

## 6. Installation and Maintenance.

- A. All landscaping and landscape elements shall be planted, and earth moving or grading performed, in a sound professional grade manner and according to accepted good planting and grading procedures.

- B. The owner of the property required to be landscaped by this Ordinance shall maintain such landscaping in a reasonably healthy condition, free from refuse and debris. All unhealthy and dead material shall be replaced within one (1) year of damage or death or the next appropriate planting period, whichever comes first. All landscaped areas shall be provided with a readily available and acceptable water supply.
- C. When mechanical equipment is located outside of a building, support equipment including air conditioning and heating devices, water and gas meters, and satellite dishes, but not including plumbing or exhaust vents or chimneys, are to be screened to the height of the particular piece of equipment, as follows:
  - 1) Roof-Mounted Equipment: To be screened by architectural features from the view of abutting streets and parcels.
  - 2) Equipment at Grade: When located on the ground adjacent to a building, mechanical equipment is to be screened by landscaping, a solid wall or fencing from the view of the street or surrounding properties. Except, that screening shall not restrict airwave access needed for a satellite dish.
- D. Outdoor storage shall be screened on all sides by a solid vegetative wall or fencing

### **Section 3.22 – Building Exterior Completion**

All new buildings established or remodeled building exteriors after the effective date of this Ordinance, shall conform to the following standards:

- 1. All exterior siding on buildings, including accessory buildings shall be of standard siding material or appropriate for long-term exterior use, such as stained or painted wood, brick, stucco, cement block, imitation brick or lime materials. Tarpaper, insulation board or rolled roofing shall not be permitted as exterior siding. All exterior renovations, including permanent roofs of materials, appropriate for long-term exterior use, must be completed within six (6) months. One six (6) month extension shall be granted if applied for prior to the expiration of the initial six (6) month period.
- 2. All dwellings shall be compatible in design and appearance with other buildings in the vicinity. Not less than two (2) exterior doors are required with the second one being either in the rear or side of the building.
- 3. All additions or rooms or other areas shall be constructed with at least similar quality workmanship and design as the original structure including permanent attachment to the principal structure and attachment to a permanent foundation constructed on the site, in accordance with the current building code regulations, as administered by Leelanau County, except for mobile homes as provided for in this Ordinance.
- 4. Temporary roof materials shall be allowed for no more than six months. One six (6) month extension shall be granted if applied for prior to the expiration of the initial six (6) month period.

### Section 3.23 - Temporary Outdoor Uses

1. **Temporary Outdoor Land Uses Allowed in All Zoning Districts.** Temporary outdoor land uses may be permitted on a temporary basis as of right in any zoning district in the Village upon obtaining a temporary outdoor land use permit from the Zoning Administrator. Such permit may be issued without a public hearing, provided that such permit shall not be issued for more than forty-five (45) days, or the time requested in the permit application if less than 45 days. The following procedures apply to the issuance of a temporary outdoor land use permit by the Zoning Administrator.
2. **Application.** An application for a temporary outdoor land use permit shall be submitted to the Zoning Administrator on such form as shall be provided for such purpose. The application shall contain the following information:
  - A. the name and address of the applicant and complete contact information, including telephone numbers and, if available, fax numbers and email addresses;
  - B. the location of the proposed temporary outdoor land use;
  - C. a description of the temporary outdoor land use;
  - D. evidence that the applicant owns the site for which the permit is requested or, alternatively, evidence that the applicant's use of the site, the application submittal and the proposed temporary outdoor land use are authorized by the site owner;
  - E. the days and times when the temporary outdoor land use is to occur and the number of days in length;
  - F. the maximum number of persons expected to visit or attend the proposed temporary outdoor land use on daily basis;
  - G. the planned areas for parking for those visiting or attending the proposed temporary land use;
  - H. evidence that the applicant has obtained, or has applied for, any license(s) required by the Village for the proposed activity or event. If such license(s) have been applied for but not yet approved, any approval under subsection 3, below, must be conditioned on the issuance of any other such required license(s).
  - I. any other information the Zoning Administrator, in his or her reasonable determination, deems necessary to properly review the permit application.
3. **Approval.** Upon review and determination that the proposed temporary outdoor land use is consistent with the requirements of this section as well as the purposes of this Zoning Ordinance and the Village's Master Plan, the Zoning Administrator may approve the permit or approve it with conditions. If the Zoning Administrator finds that the proposed temporary outdoor land use is not consistent with the requirements of this section or the purposes of this Zoning Ordinance and the Village's Master Plan, he or she shall deny the application. In making his or her determination on the application, the Zoning Administrator may, in his or her discretion, first consult with the Planning Commission.
4. **Permits.** A written temporary outdoor land use permit signed by the Zoning Administrator

will be issued for all temporary outdoor land uses which meet the requirements of this zoning ordinance.

5. **Requirements for Approval.** Before approving an application for a temporary outdoor land use permit, the Zoning Administrator shall first find that the application and the proposed temporary outdoor land use meets all of the following requirements:
  - A. The nature and intensity of the temporary use and the size and placement of any temporary structure shall be planned so that the temporary use or structure will be compatible with existing development.
  - B. The location of the temporary use or structure shall be such that adverse effects on surrounding properties will be minimal, particularly regarding the traffic generated by the temporary use or structure.
  - C. Off-street parking areas are of adequate size and properly located for the particular temporary use or structure and the entrance and exit drives are laid out so as to prevent traffic hazards and nuisances.
  - D. Signs shall conform to the Village Sign Ordinance.
  - E. Any lighting shall be directed and controlled so as to not create a nuisance to neighboring property owners.
  - F. Plans for clean up and waste control of the site.
6. **Revocation.** Upon expiration or revocation of a temporary outdoor land use permit for a temporary outdoor land use, the temporary outdoor land use shall cease and all temporary structures, dwellings or buildings shall be removed from the parcel of land. A temporary outdoor land use permit may be revoked or modified by the Zoning Administrator if any one of the following findings can be made:
  - A. That the temporary outdoor land use permit was obtained by misrepresentation or fraud.
  - B. That one (1) or more of the conditions of the temporary outdoor land use permit have not been met; and
  - C. That the use is being conducted in violation of any Village ordinance, or any state or federal law or regulation.
7. **Appeal.** An appeal of a decision by the Zoning Administrator relative to denial of a temporary outdoor land use permit for a temporary use or renewal thereof may be taken to the Zoning Board of Appeals pursuant to the provisions for appeal set forth in this Ordinance.

## **Article 4: Zoning Districts and Map**

### **Section 4.01 Classification of Zoning Districts**

For the purpose of this Ordinance, the following Zoning Districts shall be established in the Village of Empire:

GR	General Residential District
MR	Mixed Residential District
VR	Village Residential District
FS	Front Street District
GC	Gateway Corridor District
LI	Light Industrial District
R/C	Recreation/Conservation District
PUD	Planned Unit Development

### **Section 4.01.2 - Zoning Map**

The areas assigned to each Zoning District and the boundaries thereof shown on the map entitled "Village of Empire Zoning Map, Leelanau County, Michigan" are hereby established, and said map and all proper notations and other information shown thereon are hereby made a part of this Zoning Ordinance.

### **Section 4.01.3 - Boundaries of Districts**

Unless otherwise specified, the boundary lines of the Zoning Districts shall be interpreted as following along section lines, or customary subdivisions of sections, or centerlines of highways or streets, or the shoreline of waterways, or property lines of legal record at the office of the Leelanau County Register of Deeds on the date of the enactment of the Zoning Ordinance. The official Zoning Map shall be the final authority in any dispute concerning district boundaries. The Official Zoning Map shall be kept at the Village Office and shall be maintained up-to-date, with any amendments to the Ordinance involving changes to the Zoning map noted and portrayed on said map.

Where a reasonable doubt as to the exact location of a district boundary exists, the provisions of the more restrictive district shall govern the entire parcel in question, unless determined otherwise by the Zoning Board of Appeals.

### **Section 4.01.4 - Zoning of Vacated Areas**

Whenever any street, alley, highway, or other public right-of-way within the Village has been abandoned by official government action, such right-of-way property shall automatically acquire and be subject to the provisions of the Zoning District of the abutting property. In the case of an abandoned right-of-way which also serves as the district boundary, the centerline of the right-of-way shall be the district boundary.

#### **Section 4.01.5 - Zoning of Filled Areas**

Whenever, after appropriate permits are obtained, any fill material is placed in any lake, stream, or wetland so as to create a usable or buildable space, such fill area shall take on the Zoning District and accompanying provisions of the land abutting said fill area. No use on any lake or stream shall be allowed which does not conform to the Ordinance provisions on the property from which said property emanates. No fill material shall be placed in any lake or stream within the Village unless appropriate permits are obtained from the Michigan Department of Environmental Quality.

#### **Section 4.01.6 - Zoning District Changes**

When district boundaries change, any non-conforming use may continue subject to all other applicable provisions of this Ordinance.



## **Section 4.02 General Residential District (GR)**

The following provisions shall apply to the General Residential District (GR).

### **Section 4.02.1 - Intent**

This district is intended to provide for predominantly low to medium density residential development which is similar in scale and character to existing neighborhoods within the Village. Residential uses shall only be permitted to develop with the provision of public sewer (when available) or water facilities. District regulations are designed to encourage lot sizes, land coverage and open space which is compatible with and compliments existing dwelling units. This district is intended to provide for residential development near commercial and public services (post offices or libraries) oriented to serving residential uses.

### **Section 4.02.2 - Permitted Uses**

1. Single family dwellings
2. Foster care facility (6 or fewer clients)
3. Places of worship
4. Public parks, playgrounds or recreation facilities
5. Home occupations
6. Accessory buildings and uses customarily incidental to the above permitted uses

### **Section 4.02.3 - Uses Subject to Special Use Permit**

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Article 6 - Uses Subject to Special Use Permit** and the applicable portions of **Article 7 - Supplemental Site Development Standards**.

1. Two family dwellings
2. Child Care Center/Child Day Care
3. Bed and breakfast establishments
4. Planned Unit Development
5. Accessory buildings and uses customarily incidental to the above special uses

### **Section 4.02.4 - Dimensional Regulations**

Structures and uses in the General Residential District are subject to the area, height, bulk and placement requirements in **Section 4.10 - Schedule of Regulations**.

### **Section 4.03 Mixed Residential Districts (MR)**

The following provisions shall apply to the Mixed Residential District (MR).

#### **Section 4.03.1 - Intent**

This district is intended to provide a living environment which can accommodate a low to medium density residential development, as well as group housing, and apartment units where essential support services (public sewer, when available, and water, transportation, utilities) are available and where social amenities are provided at a neighborhood or community level. District regulations are designed to be flexible enough to encourage development that is varied in density, land coverage and lot sizes, yet compatible with community character and image. Regulations permit clustering in combination with open space preservation to achieve both economic and aesthetic benefit. These districts should be near commercial and public services, but may be established on larger sites on the perimeter of the Village, provided public services can be provided and there are no negative effects on adjacent land uses, natural conditions and physical limitations of the site.

The provisions of this section also recognize with the gradual extension of other property uses into the district, such as those provided for under the "Uses Subject to Special Use Permit"; there is a need for careful consideration based on sound standards as provided for through the Special Use Permit approval process.

#### **Section 4.03.2 - Permitted Uses**

1. Single family dwellings
2. Multiple family dwellings
3. Two family dwellings
4. Bed and breakfast establishments
5. Manufactured housing developments
6. Adult Day Care, Group Facilities (greater than 6)
7. Places of Worship
8. Public parks, playgrounds or recreation facilities
9. Home occupations
10. Accessory buildings and uses customarily incidental to the above permitted uses

#### **Section 4.03.3 - Uses Subject to Special Use Permit**

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Article 6: Uses Subject to Special Use Permit** and the applicable portions of **Article 7: Supplemental Site Development Standards**.

1. Group foster care facilities (greater than 6 clients)
2. Childcare center/Child daycare
3. Convalescent homes/Nursing homes
4. Planned Unit Development
5. Accessory buildings and uses customarily incidental to the above special uses

#### **Section 4.03.4 - Dimensional Regulations**

Structures and uses in the Mixed Residential District are subject to the area, height, bulk and placement requirements in **Section 4.10 - *Schedule of Regulations***.

#### **Section 4.04 Village Residential District (VR)**

The following provisions shall apply to the Village Residential District (VR).

##### **Section 4.04.1 – Intent**

This district is intended to provide for predominantly medium density residential “in-fill” development near the downtown area on the smaller pre-existing platted lots, which is similar in scale and character to existing older neighborhoods within the Village. District regulations are designed to accommodate the use of existing small lots, and encourage land coverage and open space which is compatible with and compliments existing dwelling units. This district is intended to provide for residential development near commercial and public services (post offices or libraries) oriented to serving residential uses.

##### **Section 4.04.2 - Permitted Uses**

1. Single family dwellings
2. Accessory dwellings
3. Adult day care, family home (6 or less)
4. Bed and breakfast establishments
5. Places of worship
6. Public parks, playgrounds and recreation facilities
7. Home occupations
8. Accessory buildings and uses customarily incidental to the above permitted uses

##### **Section 4.04.3 - Uses Subject to Special Use Permit**

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Article 6 - Uses Subject to Special Use Permit** and the applicable portions of **Article 7 - Supplemental Site Development Standards**.

1. Two family dwellings
2. Childcare center/Child daycare
3. Planned Unit Development
4. Accessory buildings and uses customarily incidental to the above special uses

## Specific Standards

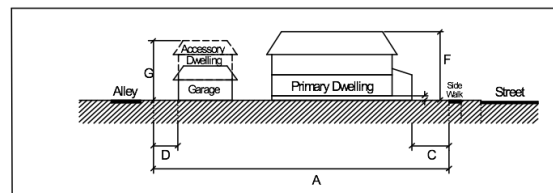
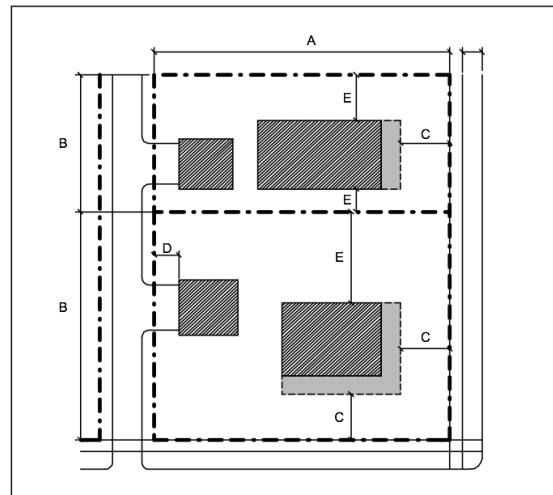
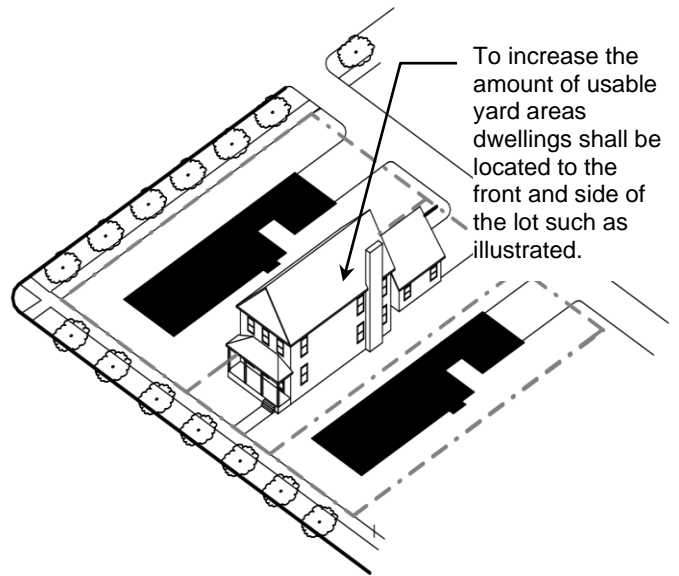
**Allowable Building Types:** Single-family dwellings along with buildings and other structures that are normally considered accessory. A single attached or detached accessory dwelling not exceeding the size of the principal residence is also allowed on lots (provided the lot owner lives in one of the dwellings on the lot). Civic Buildings, day care centers, churches, meeting/ recreation halls and other uses as listed, based on size limitations below.

**Dimensional Standards** (See illustration to the right)

- A. Lot Depth.....100' min.
- B. Lot Width.....50' min.
- C. Street Front Setback.....10' min. to 20' max. (Porch can encroach)
- D. Rear Yard Setback.....10' min. from the rear yard property line edge.
- E. Side Yard Setback.....5' min.
- F. Primary Dwelling Height.....32' max.
- G. Accessory Building Height.....25' or the height of the primary dwelling whichever is less.

## Other Specific Standards

- H. No new curb cuts shall be allowed on Niagara and Wilce Streets, garages and accessory structures shall be accessed from the alley. All off street parking areas shall be located off of the back alley.
- I. All trash storage areas for use other than single family residential shall be screened from view from Niagara and Wilce Streets, by a fence or vegetation that is a minimum of four feet in height.
- J. Minimum Roof Pitch.....8/12 or greater on the main portion of the dwelling. Dormers and porch roofs are excluded from this standard.
- K. Maximum Building Coverage.....50% of the gross lot area.
- L. Alley Requirement.....All lots shall back onto a service alley.



## Section 4.04.4 - Dimensional Regulations

Structures and uses in the Village Residential District are subject to the area, height, bulk and placement requirements in **Section 4.10 - Schedule of Regulations.**

## **Section 4.05 Front St. District**

The following provisions shall apply to the Front St. District.

### **Section 4.05.1 - Intent**

The FS District is designed to maintain the unique characteristics of the Village of Empire along Front Street in the Village core that results from a blend of residential and commercial uses which fosters a strong sense of community and encourages pedestrian access. Characteristics common to the FS District include compact development, a density and arrangement of land uses which encourages pedestrian activity and a mix of residential and limited commercial land uses in successful co-existence.

The FS District permits a variety of stores, personal services, offices and residential uses oriented toward pedestrian traffic, while providing for automobile access. Persons entering this district should be able to park once and carry out several errands.

**Section 4.05.2 - Permitted Uses:** The following are permitted uses within the FS District provided that such uses occur within an enclosed building with a maximum floor area of 5,000 square feet (i.e., including gross floor area, roofed storage, etc.)

1. Single-family dwellings
2. Two-family dwellings
3. Accessory dwellings
4. Bed and breakfast establishments
5. Childcare center/child day care
6. Retail sales and services
7. Restaurants and taverns
8. Personal service establishments
9. Business and professional offices
10. Banks and other financial institutions
11. Hospitals & medical clinics
12. Places of worship
13. Bus terminals/bus stops
14. Outdoor display and sales of merchandise, incidental to a business
15. Public parks, playgrounds and recreation facilities
16. Planned Unit Development
17. Plant materials nursery
18. Home occupations
19. Accessory buildings and uses customarily incidental to the above permitted uses

### 4.05.3 Specific Standards

#### 1. Allowable Building Types

- a. Commercial buildings as listed, and other structures that are normally considered accessory and based on size limitations below.
- b. Single-family and two-family dwellings.
- c. Mixed use commercial buildings, i.e., possessing commercial and residential uses.
- d. A single attached or detached accessory dwelling not exceeding the size of the principle residence is also allowed on lots (i.e., provided the lot owner lives in one of the dwellings on the lot).
- e. Civic buildings including schools, libraries, day care centers, churches, meeting and recreation halls.

#### 2. Dimensional Standards

- a. Lot Depth..... 100' min.
- b. Lot Width.....50' min. to 100' max.
- c. Street Front Setback.....5' min. to 20' max.
- d. Rear Yard Setback.....10' min. from the rear yard lot line. (See footnote f. in **Section 4.10 - Schedule of Regulations**).
- e. Side Yard Setback.....0' min. commercial to commercial, 5' min commercial to residential, or residential to residential.
- f. Primary Structure Height.....32' max.
- g. Accessory Building Height.....25' or the height of the primary dwelling, whichever is less.
- h. All trash storage areas for use other than single family residential shall be screened from view, by a fence or and/or an effective native evergreen vegetative screen that is a minimum of six (6) feet in height.

#### 3. Other Specific Standards

- a. Primary dwellings and commercial buildings shall be primarily oriented toward the front and/or side of the lot.
- b. Maximum Lot Coverage with Impervious Surfaces.....90% of the gross lot area.
- c. Alley Requirement. All Front Street lots shall back onto a service alley.

- d. No new curb cuts shall be allowed on Front Street, garages and accessory structures shall be accessed from the alley. All off street parking areas shall be located off of the back alley.
- e. Drive through windows are not allowed.

#### **Section 4.05.4 - Uses Subject to Special Use Permit**

Special use approval of lands and premises, and the erection and use of buildings and structures in the FS District shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Article 6 - Uses Subject to Special Use Permit** and the applicable portions of **Article 7 - Supplemental Site Development Standards**.

1. Schools licensed or chartered by the State of Michigan
2. Convalescent homes/nursing homes
3. Government and institutional offices
4. Hotels, motels and inns
5. Nursery schools
6. Veterinary clinics
7. Pet shops
8. Kennels
9. Funeral homes and mortuaries
10. Automobile repair
11. Gasoline service station
12. Planned Unit Development
13. Open air business
14. Accessory buildings and uses customarily incidental to the above special uses

#### **Section 4.05.5 - Dimensional Regulations**

Structures and uses in the FS District are subject to the area, height, bulk and placement requirements in **Section 4.10 - Schedule of Regulations**.

#### **Section 4.05.6 - Additional Standards**

1. Nuisance Prevention - The use shall not be hazardous to adjacent property, or involve uses, activities, materials or equipment which will be detrimental to the health, safety or welfare of persons or property through the excessive production of traffic, noise, smoke, fumes, ground vibration, water runoff, odors, light, glare or other nuisance.
2. Noise - Sounds emanating from a use shall not generate noise that because of its volume or frequency results in the unreasonable interference with the comfortable use and enjoyment of properties adjacent to or in the vicinity of the use. Noise, if generated, shall

be effectively managed by methods such as, but not limited to, the use of brick walls, ceramic barriers, and/or other noise abatement technologies in conjunction with fencing and/or landscaping, increased setbacks, days of the week and/or limited hours of operation.

3. Public Safety - The proposed use shall not unreasonably impact public safety, or unduly burden or exceed the ability of public safety services or facilities to handle the anticipated needs of the community.

**Specific Standards**

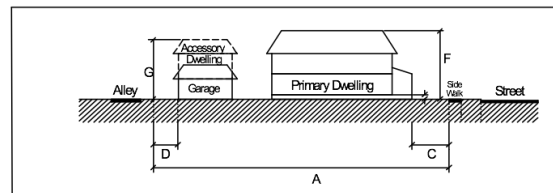
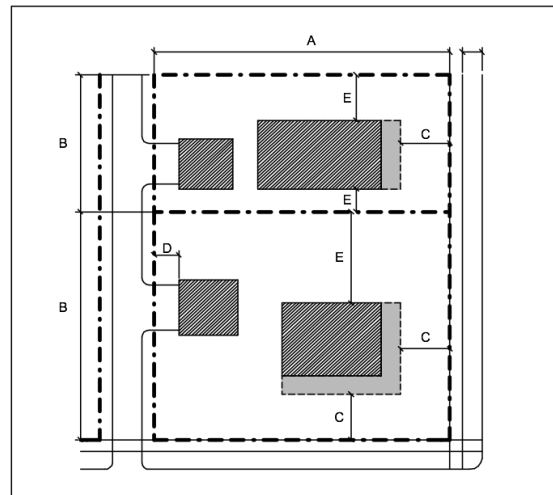
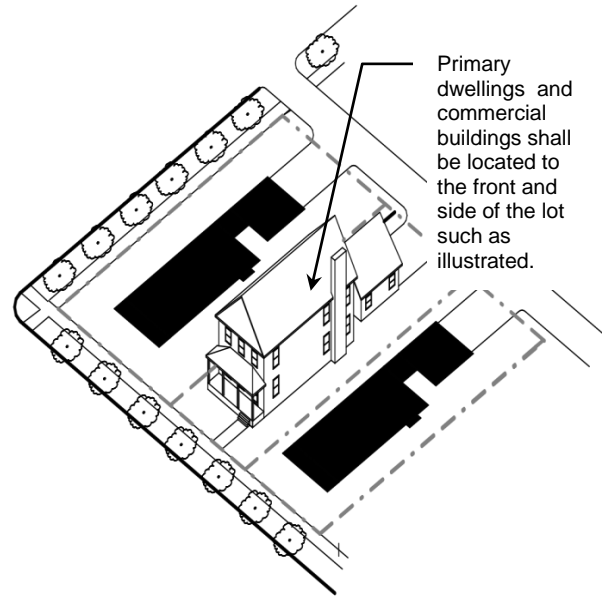
**Allowable Building Types:** Single-family dwellings along with buildings and other structures that are normally considered accessory. A single attached or detached accessory dwelling not exceeding the size of the principal residence is also allowed on lots (provided the lot owner lives in one of the dwellings on the lot). Civic Buildings including schools, libraries, day care centers, churches, meeting and recreation halls. Commercial uses as listed , based on size limitations below.

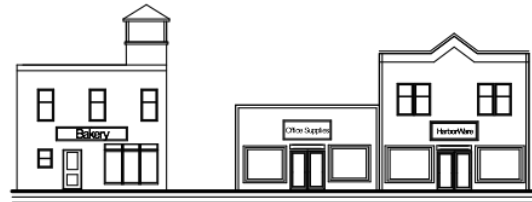
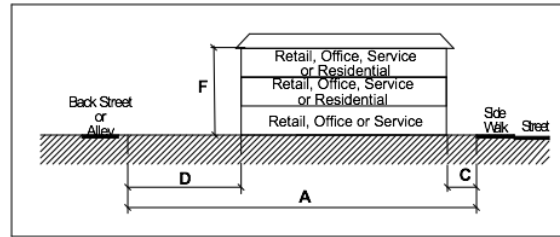
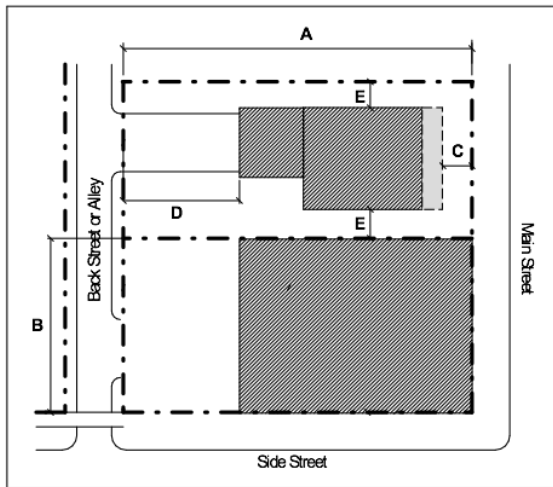
**Dimensional Standards** (See illustration to the right)

- A. Lot Depth.....100' min.
- B. Lot Width.....50' to 100' max.
- C. Street Front Setback.....5' min. to 20' max.
- D. Rear Yard Setback.....10' min. from the rear yard property line edge.
- E. Side Yard Setback.....0' min. commercial to commercial, 5' min. commercial to residential or residential to residential.
- F. Primary Structure Height.....32' max.
- G. Accessory Building Height.....25' or the height of the primary dwelling whichever is less.
- H. All trash storage areas for use other than single family residential shall be screened from view, by a fence or vegetation that is a minimum of six feet in height.

**Other Specific Standards**

- I. Primary buildings shall be primarily oriented toward the front and/or side of the lot.
- J. Maximum Building Coverage.....90% of the gross lot area
- K. Alley Requirement.....All (Front Street) lots shall back onto a service alley.
- L. No new curb cuts shall be allowed on Front Street, garages and accessory structures shall be accessed from the alley. All off street parking areas shall be located off of the back alley.
- M. Drive through windows are not allowed.





## **Section 4.06 Light Industrial District (LI)**

The following provisions shall apply to the Light Industrial District (LI).

### **Section 4.06.1 - Intent**

The Light Industrial District is designed to primarily accommodate wholesale activities, warehouses and other medium scale business and other industrial operations whose external physical effects are restricted to this district and do not affect in a detrimental way any of the surrounding districts. The Light Industrial District is so structured as to permit, along with any specified uses, the manufacturing, compounding, processing, packaging, assembly and/or treatment of finished or semi-finished products from previously prepared material.

### **Section 4.06.2 - Permitted Uses**

1. Food processing and packaging
2. Contractor facilities
3. Public utility buildings without storage yards
4. Public parks, playgrounds and recreation facilities
5. Accessory buildings and uses customarily incidental to the above permitted uses
6. Combination of Uses, subject to Section 4.06.5

### **Section 4.06.3 – Uses Subject to Special Use Permit**

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Article 6 - Uses Subject to Special Use Permit** and the applicable portions of **Article 7 - Supplemental Site Development Standards**.

1. Production, processing, assembly, manufacturing or packaging of goods or materials such as facilities may include testing, repair, storage, distribution and sale of such products.
2. Warehouses and storage buildings, but not including commercial bulk storage of flammable liquids and gases
3. Contractor's equipment storage yard
4. Machine shop
5. Public utility buildings with outside storage yards
6. Vehicle, boat or recreational vehicle repair facilities
7. Planned Unit Development
8. Sexually oriented business
9. Telecommunication towers and facilities
10. Commercial wind turbine generators
11. Accessory buildings and uses customarily incidental to the above special uses

#### **Section 4.06.4 – Dimensional Requirements**

Structures and uses in the Light Industrial District are subject to the area, height, bulk and placement requirements in **Section 4.10 - *Schedule of Regulations***

#### **Section 4.06.5 - Combination of Uses**

In the review of site plans, and/or special land use permit applications for uses involving combinations of uses otherwise permitted by right or by special land use approval in the Light Industrial District, the planning commission shall find that all such uses be mutually compatible with one another and the all-special uses standards applicable to any such component use in a combined land use shall be met for that component use. However, recognizing the potential unnecessary duplication of parking requirements for each use, the planning commission may reduce the overall parking requirement on the parcel by up to 25% if they are satisfied with the sufficiency of the parking at the reduced amount proposed by the applicant.

## **Section 4.07 Recreation Conservation District (R/C)**

The following provisions shall apply to the Recreation Conservation District (R/C).

### **Section 4.07.1 - Intent**

In the Recreation Conservation District, extreme care shall be taken to preserve and maintain any public facilities for continued and future use. Natural areas cannot be replaced if destroyed, misused or neglected.

### **Section 4.07.2 – Permitted Uses**

1. Conservation area without physical improvements
2. Accessory buildings and uses customarily incidental to the above permitted uses
3. Fund raising events conducted by civic, nonprofit or charitable organizations which are limited in time and which have obtained all required village permits for such event.

### **Section 4.07.3 - Uses Subject to Special Use Permit**

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Article 6 - Uses Subject to Special Use Permit** and the applicable portions of **Article 7 - Supplemental Site Development Standards**.

1. Single family dwellings
2. Public parks, playgrounds and recreation facilities
3. Nature preserve with improvements
4. Accessory buildings and uses customarily incidental to the above special uses

### **Section 4.07.4 - Dimensional Regulations**

Structures and uses in the Recreation Conservation District are subject to the area, height, bulk and placement requirements in **Section 4.10 - Schedule of Regulations**.

## **Section 4.08 Planned Unit Developments (PUD)**

The following provisions shall apply to the Planned Unit Development District (PUD).

### **Section 4.08.1 - Intent**

The Planned Unit Development District is designated to accommodate planned unit development projects that were approved prior to the adoption of this Zoning Ordinance. New planned unit development projects will be considered by Special Use Permit in specific zoning districts as specified in this ordinance.

### **Section 4.08.2 – Permitted Uses**

1. Single family
2. Two family
3. Multiple family dwellings
4. Accessory buildings and uses customarily incidental to the above permitted uses

### **Section 4.08.3 - Uses Subject to Special Use Permit**

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Article 6 - Uses Subject to Special Use Permit** and the applicable portions of **Article 7 - Supplemental Site Development Standards**.

1. Accessory dwellings
2. Accessory buildings and uses customarily incidental to the above special uses

### **Section 4.08.4 - Dimensional Regulations**

Structures and uses in the Planned Unit Development District are subject to the area, height, bulk and placement requirements in **Section 4.10 - Schedule of Regulations**.

## **Section 4.09 Gateway Corridor (GC) District**

The following provisions shall apply to the GC District.

### **Section 4.09.1 - Intent**

The Gateway Corridor (GC) District is designed to maintain the unique characteristics of the Village of Empire along M-22 Highway and M-72 Highway that result in safe, pedestrian friendly access to commerce and which safely connect pedestrians to the FS District, i.e., the Village core along Front St., adjacent and nearby residences, and encourages pedestrian access. Characteristics common to the GC District include compact development, a density and arrangement of land uses which encourages safe pedestrian activity, low profile signage, dark sky protective lighting, and limited commercial land uses in successful co-existence with the community at large.

This GC district permits a variety of stores, personal services, offices and others commercial uses that protect the Village's small-town character while providing for pedestrian safety, adequate and safe automobile access, and circulation.

### **Section 4.09.2 - Permitted Uses**

Permitted uses of lands and premises, and the erection and use of buildings and structures in the GC District shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Article 5 - Site Plan Review**. The following are permitted uses within the GC District provided that such uses occur within an enclosed building with a maximum floor area of less than or equal to 2,999 square feet (i.e., including gross floor area, roofed storage, etc.).

1. Single-family dwellings
2. Two-family dwellings
3. Accessory dwellings
4. Bed and breakfast establishments
5. Childcare center/child day care
6. Restaurants and taverns
7. Personal service establishments
8. Business and professional offices
9. Banks and other financial institutions
10. Hospitals & medical clinics
11. Places of worship
12. Bus terminals/bus stops
13. Public parks, playgrounds and recreation facilities
14. Planned Unit Development
15. Plant materials nursery
16. Home occupations

17. Mixed commercial and residential uses
18. Retail sales and services
19. Accessory buildings and uses customarily incidental to the above permitted uses

#### **Section 4.09.3 - Uses Subject to Special Use Permit**

Special use approval of lands and premises, and the erection and use of buildings and structures in the GC District shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Article 5 - Site Plan Review**, **Article 6 - Uses Subject to Special Use Permit**, and the applicable portions of **Article 7 - Supplemental Site Development Standards**. The following are special uses within the GS District provided that such uses occur within an enclosed building with a maximum floor area of 3,000 to 5,000 square feet (i.e., including gross floor area, roofed storage, etc.).

1. Schools licensed or chartered by the State of Michigan
2. Convalescent homes/nursing homes
3. Government and institutional offices
4. Hotels, motels and inns
5. Nursery schools
6. Veterinary clinics
7. Pet shops
8. Kennels
9. Funeral homes and mortuaries
10. Automobile repair
11. Gasoline service stations
12. Car wash facilities
13. Planned Unit Development
14. Open air business, and outdoor display and sales of merchandise incidental to a business
15. Retail sales and services
16. Accessory buildings and uses customarily incidental to the above special uses

#### **Section 4.09.4 - Specific Standards**

1. Allowable Building Types
  - a. Commercial buildings as listed, and other structures that are normally considered accessory and based on size limitations below.
  - b. Single-family and two-family dwellings.
  - c. Mixed use commercial buildings, i.e., possessing commercial and residential uses.

- d. A single attached or detached accessory dwelling not exceeding the size of the principal residence is also allowed on lots (i.e., provided the lot owner lives in one of the dwellings on the lot).
- e. Civic buildings including schools, libraries, day care centers, churches, meeting and recreation halls.

2. Dimensional Standards

- a. Lot Depth ..... 100' min.
- b. Lot Width .....50' min. to 100' max.
- c. Street Front Setback .....5' min. to 20' max.
- d. Rear Yard Setback.....10' min. from the rear yard lot line. (See footnote f. in **Section 4.10 - Schedule of Regulations**).
- e. Side Yard Setback .....0' min. commercial to commercial, 5' min commercial to residential or residential to residential
- f. Primary Structure Height ..... 32' max.
- g. Accessory Building Height .....25' or the height of the primary dwelling whichever is less.
- h. All dumpsters and trash storage areas for use other than single family residential shall be screened from view, by a barrier, solid fence and/or an effective native evergreen vegetative screen that is a minimum of six (6) feet in height.

**Section 4.09.5 - Additional Standards**

- 1. All buildings shall primarily be oriented toward the front of the lot.
- 2. Maximum lot coverage with impervious surfaces, i.e., area of roof, parking, walkways, etc. shall not exceed seventy (70%) the gross lot area. A minimum of thirty (30%) percent of the lot shall be maintained as open space.
- 3. Drive through windows are not allowed.
- 4. Awnings, overhangs, porches, walls, accessory buildings and structures, etc. shall not encroach into required setbacks.
- 5. Streetscape requirements

- a. Sidewalk requirements and design - developments within the GC District shall design and install sidewalks in compliance with **Section 3.19 - Sidewalks.**
  - b. Walkways and sidewalks, patios, structures, and areas designated for outdoor storage, parking or loading shall not be included in the open area calculation; provided, however, that pervious surface areas such as brick, stone areas and patios may be included in the required open area.
  - c. Pedestrian use of required sidewalks shall not be obstructed or in any way impeded.
6. Landscaping requirements - A minimum of twenty (20%) percent of the lot shall be landscaped and maintained as open area. A landscape plan shall be provided and approved as a part of Site Plan and Special Use Permit Reviews subject to **Section 3.21 - Landscaping.**
7. Parking, site circulation and loading - Parking spaces shall be provided subject to **Section 3.16 - Off Street Parking Standards.**
- a. Parking is required to be off-street subject to **Section 3.16.1.** Parking shall be shared, and site circulation shall work cooperatively with adjacent land uses where appropriate, and as determined by the Planning Commission.
  - b. Parking shall be on-site and within the front and/or side areas of the lot.
  - c. Loading spaces shall be provided on the side and/or rear areas of the lot.
  - d. Bicycle facilities shall be provided and reviewed in accordance with **Section 3.16.1.,11. D.**
8. Vehicle access and design - Access shall comply with **Section 3.17 - Access Controls** as determined by the Planning Commission. Site access, driveways and curb cuts shall be shared with adjacent land uses to the maximum extent possible. Vehicular and pedestrian traffic within the site shall also be safe and convenient and parking layout will not adversely interfere with the flow, visibility of traffic within the site or to and from the adjacent streets and highways. Safe and adequate access for emergency vehicles to and within the development, and adequate space(s) for turning around at street ends shall be provided. Applicants shall obtain and provide copies of any required permits from the Michigan Department of Transportation and/or Leelanau County Road Commission for any new access, declaration lane, curb cut/driveway, etc.

The use shall be designed so that its pedestrian, non-motorized and automobile circulation systems are safely and conveniently integrated with those of abutting properties, public thoroughfares, and any trails or parks intersecting or abutting such development. Drive through windows are not allowed.

- 9. Signs - Signage in the GC District shall comply with and are subject to **Village Ordinance No. 142 - Signs.**

10. Lighting - All lighting shall be fully-shielded, downward directed and comply with **Section 3.11 - Outdoor Lighting**, and shall be compliant with the U.S. Department of Energy's Exterior Lighting Guide for protection of the dark night sky.<sup>1</sup>
11. Stormwater - The use shall not result in any increased stormwater runoff to adjacent properties after development than before, and shall utilize innovative stormwater management techniques and systems such as bio-swales, rain gardens, underground storage, and other technologies that result in on-site groundwater infiltration for stormwater disposal.
12. Phasing - The use shall be designed such that phases of development, if phased, shall be in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility services, stormwater drainage or erosion control.
13. The use shall be designed to preserve public views and existing important natural, historical, and architectural features of significance within and adjacent to the development.
14. The proposed use shall not adversely impact the environment.
15. All utilities shall be installed underground.
16. The use shall meet the standards of and obtain permits from all other relevant local, state and/or federal governmental agencies as applicable. Copies of all such permits shall be provided to the Village.
17. Nuisance Prevention - The use shall not be hazardous to adjacent property, or involve uses, activities, materials or equipment which will be detrimental to the health, safety or welfare of persons or property through the excessive production of traffic, noise, smoke, fumes, ground vibration, water runoff, odors, light, glare or other nuisance.
18. Noise - Sounds emanating from a use shall not generate noise that because of its volume or frequency results in the unreasonable interference with the comfortable use and enjoyment of properties adjacent to or in the vicinity of the use. Noise, if generated, shall be effectively managed by methods such as, but not limited to, the use of earthen berms, brick walls, ceramic barriers, and/or other noise abatement technologies in conjunction with fencing and/or landscaping, increased setbacks, days of the week and/or limited hours of operation.
19. Public Safety - The proposed use shall not unreasonably impact public safety, or unduly burden or exceed the ability of public safety services or facilities to handle the anticipated needs of the community.

#### **Section 4.09.6 - Additional Requirement**

The following may be required at the discretion of the Planning Commission.

1. Traffic study - Valid and reliable traffic study(-ies) shall be provided by a licensed traffic engineer to determine the impact of on the existing traffic level of service (LOS) and public safety from the proposed land use.

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<sup>1</sup> [http://cltc.ucdavis.edu/sites/default/files/files/publication/2010\\_DOE\\_FEMP\\_Exterior\\_Lighting\\_Guide.pdf](http://cltc.ucdavis.edu/sites/default/files/files/publication/2010_DOE_FEMP_Exterior_Lighting_Guide.pdf)

**Section 4.10 Schedule of Regulations -**

Key: D.U. --Dwelling Unit sq. ft. --square feet ft. --feet

Zoning District	District Name	Min. Lot Area		Max.Ht of Structure	Yard Setbacks					Min. space btwn Bldgs	Min. & Max. S.F. per D.U or Main Bldg.		Maximum Lot Coverage %
		Area (sq. ft)	Width (ft)	Feet (a)	Front (ft)	Min. Side (ft)	Min. Rear (ft)	Min. Alley	Min. Water				
GR	General Residential	12,500	100	32	20 min	10	10	10	20	20	900	---	25% (b)
MR	Mixed Residential	2 ac (c)	150	32	40 min	20	20	20 (d)	20	40	1 BR- 540/ DU 2 BR 700/DU		40% (b)
VR	Village Residential	6,250	50	32	10 min 20 max	5	10	10	----	10	750	---	50%
GC	Gateway Corridor	5,000	50	32	5 min 20 max	0 (e) (f)	10 (f)	10	----	10 (g)	750	2,999 (h)	70%
FS	Front Street	5,000	50	32	5 min 20 max	0 (e) (f)	10 (f)	10	----	10 (g)	750	5,000	90%
LI	Light Industrial	1 acre	100	32	20 min	15 (f)	20	10	----	10	NA	NA	60%
R/C	Recreation/Conservation	3 acres	300	32	10 min	10	20	20	20	20	900	---	10%
PUD	Planned Unit Development	See Article 7			See Article 7								

- a) Maximum height for an accessory building shall be 25 feet or the height of the primary structure, whichever is less.
- b) Existing 50' wide (or less) platted lots shall be permitted a maximum of 50 percent building coverage.
- c) A minimum of 8,700 square feet of lot area is required per dwelling unit.
- d) Minimum setback from an internal drive serving multiple family dwellings, shall be 10 feet.
- e) Minimum 0' side yard setback applies when a commercial use is adjacent to a commercial use, the setback is increased to 5' for a commercial use adjacent to a residential use, or for a residential use adjacent to another residential use.
- f) Except when adjacent to a different zoning district, the greater of the two district side setback standards applies.
- g) The minimum building spacing does not apply for the portion of a building utilizing the zero-setback provision, provided a firewall is provided between buildings located on the property line.
- h) Maximum floor area in the GC District shall be 2,999 sq. ft. for any permitted use and 3,000 – 5,000 sq. ft. for any special use.

## Article 5: Site Plan Review

### Article 5: Site Plan Review

#### Section 5.01 – Purpose

The purpose of this article is to specify the documents and/or drawings required, to ensure that a proposed land use or development activity is in compliance with this ordinance. Nothing herein shall relieve the applicant from complying with all applicable local ordinances, and state and federal statutes and regulations. Furthermore, its purpose is to ensure that development taking place within the Village is properly designed, safe, efficient, environmentally sound, and designed in such manner as to protect adjacent properties from substantial adverse impacts.

#### Section 5.02 – Plot Plan

The Zoning Administrator shall require that all applications for Land Use Permits, which do not require a site plan review, be accompanied by plans and specifications including a Plot Plan, drawn to scale, showing the following:

1. The shape, location, and dimensions of the lot, drawn to scale. The scale shall be of such size as deemed adequate by the Zoning Administrator to make a judgment that the application meets the requirements of this ordinance. When deemed necessary by the Zoning Administrator, a survey may be required.
2. The location, shape and size of all buildings or other structures to be erected, altered or moved onto the lot and of any building or other structure already on the lot, drawn to scale. In addition, an elevation drawing of the proposed building(s) may be required by the Zoning Administrator in order to measure the height of the proposed structures.
3. The location and configuration of the lot access and driveway, drawn to scale.
4. The existing and intended use of the lot and of all such structures upon it, including, in residential areas, the number of dwelling units the building is intended to accommodate.
5. Other information concerning the lot or adjoining lots that may be essential for determining whether the provisions of this Ordinance are being observed.

#### Section 5.03 – Site Plan Review

Required site plans give the community an opportunity to review development proposals in a concise and consistent manner. The use of the site plan ensures that the physical changes in the property meet with local approval and that development actually occurs as it was planned and represented by the landowner and/or developer.

Site Plans (*Level “A” Review*) and Site Plans (*Level “B” Review*). A site plan shall be required for any permitted use involving site development and any special land use, other than a single-family or two-family residential dwelling or residential accessory building. Site plans shall be reviewed in accordance with this Section. Upon approval of a plan, a land use permit is issued.

1. **Approval Authority/Responsibility.** Site plan review shall be required, as applicable, under the following conditions:

Level “A” Review. The Zoning Administrator shall review site plans in connection with the creation of a use or the erection of a building or structure in any of the following circumstances:

1. Commercial and institutional buildings less than 5,000 square feet that will accommodate a use permitted by right.
2. Additions to existing buildings or parking areas in any zoning district, less than 5,000 square feet.
3. Exceptions:
  - a. When, in the opinion of the Zoning Administrator, a project which otherwise qualifies for Level “A” site plan review may have a negative impact on surrounding properties, the Zoning Administrator may, at their discretion, submit the site plan to the Planning Commission for review and approval. In such cases, the Planning Commission shall follow the review procedure for Level “B” site plans and may require any additional information necessary to make an informed decision.
  - b. When, in the opinion of the Zoning Administrator and Planning Commission Chairperson, a project which otherwise qualifies as Level “B” for site plan review, does not necessitate additional stormwater management, major site preparation, landscaping or major utility expansion, the plan may be reviewed and approved administratively.

Level “B” Review. The Planning Commission shall act upon all site plans, other than those provided for as Level “A” review, in connection with the creation of a use or the erection of a building or structure in any of the following circumstances:

1. Commercial, institutional, and other buildings 5,000 square feet or more.
2. Any Special Land Use in any district.
3. Any Planned Unit Development or Site Condominium.

2. **Circumstances Requiring a Site Plan.** Site plans are also required for the following uses:
  - A. All new uses and/or structures except one-family or two-family residential units and except associated accessory structures to one-family or two-family residential units.
  - B. Expansion or renovation of an existing use, other than one-family or two-family residential use, which increases the existing floor space more than twenty-five (25) percent.
  - C. Changes of use for an existing structure or lot.

- D. Any use requiring Special Land Use approval in any district.
- E. Other uses as required by this Ordinance.

3. **Pre-application Conference.** Applicants may request a non-binding pre-application meeting with the Zoning Administrator and Planning Commission Chair to assist in understanding the site plan review process, and other ordinance requirements; and to provide insight as to what portions of their proposed development may be of concern to the Planning Commission. No engineered plans will be accepted at or before the pre-application meeting.

This conference shall not be mandatory but is recommended. It is recommended for projects that a pre-application conference be held well in advance of the desired start of construction. Such an advance conference will allow the applicant/developer time to prepare the needed information for the Planning Commission to complete its review.

4. **Site Plan Data Required.** Each site plan submitted shall contain the following information unless specifically waived, in whole or in part, by the Zoning Administrator (i.e., Level "A" Review) or Planning Commission (i.e., Level "B" Review). The Planning Commission or Zoning Administrator can waive any or all of the below site plan requirements when it finds those requirements are not applicable to the proposed development.

- A. The name and address of the property owner and developer.
- B. Site location, address, and tax parcel number.
- C. The date, north arrow, scale, and name of the individual or firm responsible for preparing said plan. The scale must be at least one (1) inch = fifty (50) feet for parcels under three (3) acres. For parcels greater than three (3) acres, the portion of the property pertaining to the application, plus two hundred (200) feet in each direction, shall be at a scale of at least one (1) inch = fifty (50) feet (area enlargement). The full property shall be drawn to scale, and shall indicate the location of the area of enlargement.
- D. A certified survey of the property prepared and sealed by a professional licensed surveyor, showing at a minimum the boundary lines of the property, to include all dimensions and legal description.
- E. The location of all existing structures and all proposed uses or structures on the site, including proposed drives, walkways, signs, exterior lighting, adequate parking for the proposed uses (i.e., show the dimensions of a typical parking stall and parking lot), loading and unloading areas, if necessary, common use areas and recreational areas and facilities. An elevation drawing of the proposed building(s) shall be required in order to review the proposed building bulk and verify height.
- F. The location and width of all abutting rights-of-way, easements, municipal water, private water wells, wastewater systems, and utility lines within or bordering the subject project.

- G. The location of existing natural and environmental features, such as watercourses, wetlands, shorelines, man-made drains, trees, wooded areas and other environmental features.
- H. A vicinity sketch showing the location of the site in relation to the surrounding street system and other land uses within three hundred (300) feet in every direction of the proposed use including land uses on the opposite side of any public street.
- I. The location and identification of all existing structures, lighting, signs, ingress drives, roads, and parking within a two hundred (200) foot radius of the site, including road names.
- J. The existing zoning district in which the site is located with required setbacks specified on the site plan and the zoning of adjacent parcels.
- K. The location of all existing and proposed landscaping as well as all existing and proposed fences, walls, and sidewalks.
- L. The location, size, and slope of all surface and subsurface drainage facilities.
- M. Project description, including the total number of structures, units, bedrooms, offices, square feet, total and usable floor area, carports or garages, employees by shift, fans and ventilation, amount of recreational open space, type of recreation facilities to be provided, and related information as may be pertinent or as may otherwise be required by this Ordinance.
- N. Summary tables, cross-sections and/or floor plans should be included with site plans for proposed structures, giving the following information:
  - 1. The number of units proposed, by type, including a typical floor plan for each unit.
  - 2. The area of the proposed units in square feet, as well as area dimensions of driveways and staging areas.
  - 3. Typical elevation drawings of the front and rear of each building.
- O. The topography of the existing and finished site shall be shown by contours or spot elevations. Where the existing slope on any part of the site is ten percent (10%) or greater, contours shall be shown at height intervals of two (2) feet or less.
- P. Generalized soil analysis data demonstrating their adaptability to the use. More detailed information may be required where the Zoning Administrator (i.e., Level "A" Review) or Planning Commission (i.e., Level "B" Review) determines that the site and use warrant a more critical review of soils.
- Q. All site plans shall comply with the terms of the Leelanau County Soil Erosion Sedimentation and Storm Water Runoff Control Ordinance. It shall be the

applicant's responsibility to provide documentation of compliance of this County Ordinance.

- R. Anticipated hours of operation for proposed use. The Planning Commission may impose reasonable limits to hours of operation as a condition of site plan approval when warranted to assure compatibility with surrounding land uses.
- S. Project completion schedule.
- T. Such other information as is necessary to enable the Zoning Administrator (i.e., Level "A" Review) or Planning Commission (i.e., Level "B" Review) to determine whether the site plan will conform with the intent of the Village Master Plan and the provisions of this Ordinance.
- U. Impact Statement:

An impact statement shall be provided for all Level B site plan reviews addressing the following as applicable:

1. A complete description of the proposed development including site size and location; the number of lots or units proposed; proposed development density; and other factors as requested by the Zoning Administrator or the Planning Commission.
2. Expected impact on community services. The impact statement should assess, and detail likely impacts on and how these services are to be provided: municipal water, public safety, traffic and other factors as requested by the Zoning Administrator or the Planning Commission.
3. Statements relative to the environmental impact of the proposed development. The impact statement should assess and detail likely impacts such as topography/soils, shorelines, wildlife habitat, air quality, water quality (i.e., groundwater and surface water), noise, and the scale of development or other factors as requested by the Zoning Administrator or the Planning Commission.
4. Statement relative to the impact of the proposed development on the Village's economy, population, and community character.

**5. Application Submittal Procedures.**

- A. Ten (10) copies of the proposed site plan, including all required additional or related information, shall be presented to the Zoning Administrator's office by the petitioner or property owner or his designated agent at least thirty (30) days prior to the Planning Commission meeting at which the site plan will be considered. The Zoning Administrator shall cause the submittal to be placed on the agenda of the next regular Planning Commission meeting.
- B. The Zoning Administrator or Planning Commission may seek the site plan review and comment from the Glen Lake Fire Chief, Village of Empire Department of Public Works, Benzie-Leelanau District Health Department, Leelanau County

Drain Commissioner, Leelanau County Soil Erosion Control Officer, Michigan Department of Natural Resources, Michigan Department of Environment Great Lakes and Energy, or other agencies as appropriate prior to consideration for approval.

- C. Application fees as determined pursuant to Section 8.05 of this Ordinance shall be paid when the application and site plan are submitted to cover the estimated review costs.
- D. Where the applicant is dependent upon the grant of any variances by the Zoning Board of Appeals, said favorable action by the Zoning Board of Appeals shall be necessary before the site plan approval can be granted, or the site plan may be approved subject to favorable action by the Zoning Board of Appeals.
- E. The Zoning Administrator shall prepare a finding of fact document to accompany any Level B site plan review.

**6. Completeness Review.**

- A. Administrative Review. The Zoning Administrator shall review all site plan application submittals to certify that it contains all the elements required by this Ordinance.
  - 1. Incomplete Submittal. If the site plan is not found to be complete, the Zoning Administrator shall return the site plan to the applicant with a checklist of outstanding items. If found incomplete by the Planning Commission, no action shall be taken until the application is deemed complete.
  - 2. Complete Submittal. If the site plan is found to be complete, the Village shall proceed with a Level “A” or Level “B” review process, as outlined in **Section 5.03.7** or **Section 5.03.8** below.
- B. Waivers. Applications shall contain the information required in the applicable checklist, unless waived by the Zoning Administrator during Level “A” reviews or if the Zoning Administrator determines the information submitted is sufficient for reviews conducted by the Planning Commission for a Level “B” review. In the determination and decision to process the application and route it to the Planning Commission, the Zoning Administrator shall find that information for which a waiver is sought is not applicable to the site plan. For Level “B” reviews, the Planning Commission shall provide a final determination concerning completeness and information applicable to the review.

**7. Level “A” Site Plan Review Procedure.**

- A. Submittal. Three (3) copies of a complete site plan and application materials and an electronic version, in a format specified by the Village, shall be submitted to the Zoning Administrator along with an application for that purpose and a fee, as established by the Village Council pursuant to **Section 8.05** of this Ordinance.

- B. **Completeness and Review.** The Zoning Administrator shall review the site plan for completeness in accordance with Section 3.05.6.
- C. **Decision.**
  - 1. The Zoning Administrator shall consider the site plan, any comments received, and the applicable standards of this ordinance, and shall either approve the site plan, as submitted, if all applicable requirements and standards have been met; approve the site plan with conditions; or deny approval of the site plan, if applicable requirements and standards have not been met.
  - 2. The reasons for the Zoning Administrator's action, along with any conditions that may be attached, shall be stated in writing and provided to the applicant.
- D. **Approval.** If approved, three (3) copies of the site plan shall be signed and dated by the Zoning Administrator and the applicant. Two (2) copies shall be kept on file with the Village and one (1) copy shall be returned to the applicant or his/her designated representative. If the plan is approved with conditions, three (3) copies of the revised site plan shall be resubmitted reflecting those conditions and shall be signed and dated by the applicant and Administrator, two (2) copies shall be kept on file with the Village and one (1) copy shall be returned to the applicant prior to issuance of any permits.

8. **Level "B" Site Plan Review Procedure.**

- A. **Submittal.**

Copies. Twelve (12) copies of a complete site plan and an electronic version, in a format specified by the Village, shall be submitted to the Zoning Administrator along with an application for that purpose and a fee in accordance with **Section 8.05** of this Ordinance.
- B. **Completeness and Review.**

The Zoning Administrator shall review the site plan for completeness and shall obtain comments from the Village departments or other relevant review agencies or consultants.
- C. **Distribution.**

Once the Zoning Administrator determines that the site plan is complete in accordance with **Section 3.05.6**, the site plan shall be transmitted to the Planning Commission for consideration at its next meeting. Comments, if any, from any reviewing agency shall be transmitted to the Planning Commission prior to its review of the site plan.
- D. **Planning Commission Review.**

The Planning Commission shall consider the site plan and shall either approve the site plan, as submitted, if all applicable requirements and standards have been met; approve the site plan with conditions; or deny approval of the site plan if applicable requirements and standards have not been met. The Planning Commission review shall be based on the requirements of this article, comments received from appropriate agencies, Village departments and others, and, specifically, the standards of approval in **Section 3.05.7** below.

**E. Decision.**

1. Approval: If approved, three (3) copies of the site plan shall be signed and dated by the chairperson of the Planning Commission and the applicant. Two (2) copies shall be kept on file with the Village and one (1) copy shall be returned to the applicant or his designated representative. If the plan is approved with conditions, three (3) copies of the revised site plan shall be resubmitted reflecting those conditions and shall be signed and dated by the applicant and the Planning Commission chairperson, two (2) copies shall be kept on file with the Village and one (1) copy shall be returned to the applicant prior to issuance of any permits.
2. Denial: If rejected, the Planning Commission shall notify the applicant in writing of its decision, citing the reasons for rejection.

**9. Standards for Granting Site Plan Approval.**

- A. Consistent with this Section, the Zoning Administrator (i.e., Level “A” Review) or Planning Commission (i.e., Level “B” Review) shall approve, or approve with conditions, an application for a site plan only upon a finding that the proposed site plan complies with all applicable provisions of this Ordinance, the Village Master Plan and other Village planning requirements, and other applicable ordinances and the standards listed below, unless the Zoning Administrator or Planning Commission waives a particular requirements upon a finding that the requirement and/or standard is not applicable to the proposed development under consideration and the waiver of that standard will not be significantly detrimental to surrounding property or to the intent of the Ordinance. The Zoning Administrator or Planning Commission’s decision shall be in writing and shall include findings of fact, based on evidence presented on each standard.
- B. All elements of the site plan shall be designed so that there is a limited amount of change in the overall natural contours of the site and shall minimize reshaping in favor of designing the project to respect existing features of the site in relation to topography, the size and type of the lot, the character of adjoining property and the type and size of buildings. The site shall be so developed as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this Ordinance.
- C. Special attention shall be given to proper site drainage so that storm water treatment and/or disposal does not adversely impact neighboring properties.
- D. The site plan shall provide reasonable, visual and sound privacy for all dwelling units located therein. Fences, walls, barriers and landscaping shall be used, as appropriate, for the protection and enhancement of property and for the privacy of its occupants.
- E. All buildings or groups of buildings shall be so arranged as to permit emergency access by some practical means to as many of the sides as feasible.

- F. Every structure or dwelling unit shall have access to a public street, private road, walkway or other area dedicated to common use.
  - G. Pedestrian walkways or sidewalks shall be provided separate from the streets or roads in accordance with **Section 3.18 - Streets, Private Roads, Driveways and Section 3.19 - Sidewalks** of this Ordinance.
  - H. All loading and unloading areas and outside storage areas, including areas for the storage of trash, which face or are visible from residential districts or public thoroughfares, shall be screened, by a fence or wall meeting the requirements of **Section 3.09** or vegetative screening no less than six feet in height.
  - I. Exterior lighting shall comply with the requirements of **Section 3.11**.
  - J. The arrangement of public or common ways for vehicular and pedestrian circulation shall respect the pattern of existing or planned streets and pedestrian or bicycle pathways in the area. Streets and drives which are part of an existing or planned street pattern which serves adjacent development shall be of a width appropriate to the traffic volume they will carry and shall have a dedicated right-of-way equal to that specified in Village of Empire Ordinance 121 and Streets, Private Roads, Driveways and Sidewalks of this Ordinance.
  - K. All streets shall be developed in accordance with any Village street, road standards and specifications.
  - L. Site plans shall conform to all applicable requirements of state and federal statutes and the Village of Empire Master Plan, and approval may be conditioned on the applicant receiving necessary state and federal permits before the actual land use permit authorizing the special land use is granted.
  - M. The Planning Commission may seek the recommendations of the Glen Lake Fire Chief, Village of Empire Department of Public Works, Benzie-Leelanau District Health Department, Leelanau County Drain Commissioner, Leelanau County Soil Erosion Control Officer, Michigan Department of Natural Resources, Michigan Department of Environment Great Lakes and Energy, or other agencies as appropriate.
10. **Conformity to Approved Site Plan Required.**  
Following approval of a site plan by the Planning Commission, the applicant shall construct the site plan improvements in complete conformity with the approved site plan. Failure to do so shall be deemed a violation of this Ordinance.
11. **Amendment of Approved Site Plan.**  
Amendment of an approved site plan shall be permitted only under the following circumstances:
- A. The owner of property for which a site plan has been approved shall notify the Zoning Administrator of any desired change to the approved site plan. Minor changes may be approved by the Zoning Administrator upon determining that the proposed revision(s) will not alter the basic design and character of the site plan,

nor any specified conditions imposed as part of the original approval. Minor changes shall include the following:

1. Reduction of the size of any building and/or sign.
  2. Movement of buildings and/or signs by no more the ten (10) feet.
  3. Landscaping approved in the site plan that is replaced by similar landscaping to an equal or greater extent.
  4. Changes in floor plans that do not exceed five (5%) percent of the total floor area and which do not alter the character of the use or increase the amount of required parking.
  5. Internal re-arrangement of a parking lot which does not affect the number of parking spaces or alter access locations or design.
  6. Changes related to item 1) through 5) above, required or requested by the Village of Empire, Leelanau County, or other state of federal regulatory agencies in order to conform with other laws or regulations; provided the extent of such changes does not alter the basic design and character of the site plan, nor any specified conditions imposed as part of the original approval.
  7. All amendments to a site plan approved by the Zoning Administrator shall be in writing. After approval by the Zoning Administrator, the Applicant shall prepare a revised site plan showing the approved amendment. The revised site plan shall contain a list of all approved amendments and a place for the Zoning Administrator to sign and date all approved amendments.
- B. An amendment to an approved site plan that cannot be processed by the Zoning Administrator under subsection (A) above shall be processed in the same manner as the original site plan application.
12. **Conditional Approvals.**  
The Planning Commission may impose reasonable conditions with the approval of a final site plan, pursuant to **Section 8.03 of this Ordinance.**
13. **Performance Guarantee Required.**  
The Planning Commission may require an applicant to provide a performance guarantee in connection with the approval of a final site plan, pursuant to **Section 8.06 of this Ordinance.**
14. **As-Built Plan.**  
Upon completion of the installation of required improvements as shown on the approved final site plan, the property owner shall submit to the Zoning Administrator two (2) copies of an "as built" plan, certified by the engineer or surveyor, at least one week prior to the anticipated occupancy of any building. The Zoning Administrator shall review as built plans and may make the final inspection prior to the County issuance of the Occupancy Permit.

## Article 6: Uses Subject to Special Use Permit

### Section 6.01 – General Requirements

Uses requiring a special use permit shall be subject to the general requirements of this Article, the general regulations of this Ordinance and supplemental site development standards of this Ordinance, the provisions of the zoning district where located, in order to prevent conflict with or impairment of the other uses or uses permitted by right within the district. Each use shall be considered individually on its merits.

### Section 6.02 – Uses Subject to Special Use Permit

#### 1. Applications.

An application for a special use permit shall be submitted through the office of the Zoning Administrator, to the Planning Commission, on a special form provided for that purpose, and shall include the following:

- A. Site plan prepared under the requirements of **Section 5.03 - Site Plan Review (All Districts) - Site Plan Data Required.**
- B. Name and address of applicant and owner of the premises.
- C. Description of proposed use, including parking facilities, if required, and any exceptional traffic situation the use may occasion.
- D. A statement by applicant appraising the probable effect or impact of the special use on the surrounding neighborhood.
- E. The application shall be accompanied by the fee as provided for in **Section 8.05.**

#### 2. Public Hearings.

The Planning Commission shall hold a public hearing for all requests for a special use permit. A notice of the uses subject to special use permit request and public hearing as required by the Michigan Zoning Enabling Act, Act 110 of Public Acts 2006, shall be provided. The notice shall be given not less than 15 days before the date the application will be considered. The notice shall describe the nature of the special use permit request; indicate the subject property, state when and where the public hearing on the special use permit request will be held and when the special use request will be considered, and when and where the written comments will be received concerning the request. Notices shall be provided as follows:

- A. One notice shall be published in a newspaper which circulates generally in the Village.
- B. Notice shall be sent by mail or personal delivery to the owners of the subject property.

- C. Notice shall be sent by mail or personal delivery to the owners of property within 300 feet of the boundary of the subject property, regardless of whether such property is located inside the Village.
- D. Notice shall be sent by mail or personal delivery to all the occupants of structures within 300 feet of the boundary of the subject property, regardless of whether the occupant is located inside the Village. If a structure contains more than one dwelling unit or spatial area, 1 occupant of each dwelling unit or spatial area shall receive notice.

3. **Standards for granting Special use permit.**

The Planning Commission shall approve, or approve with conditions an application for a special land use permit only upon finding that the proposed special use complies with all the following standards:

**A. Allowed Special Use.**

The property subject to the application is located in a zoning district in which the proposed special use is allowed.

**B. Compatibility with Adjacent Land Uses.**

- 1) The proposed use subject to a special use permit shall be designed, constructed, operated and maintained so as to be compatible with surrounding properties and not to diminish the opportunity for such properties to be used and developed as zoned.
- 2) The proposed special use shall not involve uses, activities, processes, materials, or equipment that will be incompatible with and create a substantially negative impact on other conforming properties in the areas by reason of traffic, noise, smoke, fumes glare, odors, or the accumulation of scrap material that can be seen from any public road or seen from any adjacent land owned by another person.

**C. Public Services.**

- 1) The proposed special use will not place demands on fire, police, or other public resources in excess of current capacity.
- 2) The proposed special use will be adequately served by public or private streets, water and sewer facilities, and refuse collection and disposal services.

**D. Social and Economic Well-Being of the Community.**

The proposed special use shall not be detrimental to the social and economic well-being of the surrounding residents, businesses, landowners, and the community as a whole.

**E. Compatibility with Natural Environment.**

The proposed special use will not involve uses, activities, processes, materials, or equipment that will create a substantially negative impact on the natural resources of the township or the natural environment as a whole.

F. **Compliance with Specific Standards.**

The proposed special use shall comply with all applicable specific standards required under this Ordinance.

4. **Conditional Approvals.** Subject to **Section 8.03** of this Ordinance, the Planning Commission may impose reasonable conditions with the approval of the special use permit and in connection therewith, the approval of a final site plan.

5. **Performance Guarantee Required.** The Planning Commission may require an applicant to provide a performance guarantee in connection with the approval of a final site plan, pursuant to **Section 8.06** of this Ordinance.

6. **Amendment of Approved Special Use Permits.**

Amendment of an approved special use permit shall be permitted only under the following circumstances:

A. The owner of property for which a special use permit has been approved shall notify the Zoning Administrator of any desired change to the approved special use. Minor changes may be approved by the Zoning Administrator upon determining that the proposed revision(s) will not alter the basic design, character or scope of the special use, nor any specified conditions imposed as part of the original approval. Minor changes shall include the following:

- 1) Reduction of the size of any building and/or sign.
- 2) Movement of buildings and/or signs by no more the ten (10) feet.
- 3) Landscaping approved in the special use that is replaced by similar landscaping to an equal or greater extent.
- 4) Changes in floor plans that do not exceed five (5%) percent of the total floor area and which do not alter the character of the use or increase the amount of required parking.
- 5) Internal re-arrangement of a parking lot which does not affect the number of parking spaces or alter access locations or design.
- 6) Changes related to item 1) through 5) above, required or requested by the Village of Empire, Leelanau County, or other state or federal regulatory agencies in order to conform with other laws or regulations; provided the extent of such changes does not alter the basic design and character of the special use, nor any specified conditions imposed as part of the original approval.
- 7) All amendments to a special use approved by the Zoning Administrator shall be in writing. After approval by the Zoning Administrator, the Applicant shall prepare a revised site plan showing the approved amendment. The revised site plan shall contain a list of all approved amendments and a place for the Zoning Administrator to sign and date all approved amendments.

B. An amendment to an approved special use permit that cannot be processed by the Zoning Administrator under subsection (A) above shall be processed in the same manner as the original special use application.

7. **Limitations on Validity of Permit.**

Construction must be initiated under a Special Use Permit within one (1) year from date of issuance of the permit. Upon receipt of a written request for an extension, a one year extension may be granted by the Planning Commission if the Planning Commission determines the nature of the problems preventing project initiation are legitimate, and that the approved site plan adequately represents current conditions on and surrounding the site. If the project is not initiated within twenty-three (23) months of the original approval, the Planning Commission shall initiate a public hearing, with the applicant responsible for the expense thereof, to afford the permit holder an opportunity to explain why the permit approval should be extended further. Unless satisfied that the project remains appropriate in the proposed location and that initiation is imminent, the Planning Commission shall issue an order to the Zoning Administrator to cancel the special use permit. Thereafter, the project may proceed if approved after going through the entire Special Use Permit process again, starting with a new application.

8. **No Right of Appeal.**

Any other provisions of this Ordinance notwithstanding, any requirement, decision or determination by the Planning Commission made pursuant to this Article shall not be appealable to the Zoning Board of Appeals.

9. **Inspection.**

The Zoning Administrator shall have the right to inspect the property for any special use to ensure continued compliance with the conditions of the special use permit.

10. **Revocation.**

The Planning Commission shall have the authority to revoke any Special Use Permit after a public hearing has been held and it has been proved that the holder of the permit has failed to comply with the applicable requirements in this Article or with the terms of a permit issued pursuant to this Ordinance. After revocation notice has been given, the use for which the permit was granted must cease within sixty (60) days.

## Article 7: Supplemental Site Development Standards

Those Permitted Uses and uses subject to Special Use Permit enumerated in any zoning district, if included below, shall be subject to the following conditions and requirements.

### Section 7.01 Automobile Repair / Gasoline Service Station

1. Minimum lot size shall be twenty thousand (20,000) square feet for a Service station or repair garage and twelve thousand (12,000) square feet for a filling station.
2. Minimum lot width shall be one hundred twenty (120) feet for a service station, repair garage and one hundred (100) feet for a filling station.
3. An automobile service station building, repair garage or main building for a filling station shall be located not less than forty (40) feet from the road right-of-way or less than twenty-five (25) feet from any side or rear lot line of any adjoining property.
4. No ingress or egress to an automobile service station, public garage or filling station, shall be closer than twenty-five (25) feet from any intersection or residential property line abutting the property on which such facility is located.
5. All lubrication equipment, hydraulic hoists and pits shall be completely enclosed within a building. All gasoline pumps shall be located not less than twenty-five (25) feet from any lot line 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.
6. When adjoining residential property, a masonry wall at least six (6) 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.
7. All outside storage areas for trash, used tires, auto parts and similar items shall be enclosed by a masonry wall at least six (6) 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.
8. All exterior lighting shall comply with **Section 3.11 - Outdoor Lighting** of this Ordinance.
9. On a corner lot, both road frontage sides shall conform to all applicable front yard regulations of this ordinance.
10. Parking and stacking spaces shall be provided subject to the **Section 3.16 - Off Street Parking Standards**.

## **Section 7.02 Bed and Breakfast Establishments**

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

1. **Bed and Breakfast Establishments:** The bed and breakfast establishments shall be clearly incidental to the principal residence on the site. Accordingly, the bed and breakfast establishments shall be confined to the single-family dwelling unit, which is the principal dwelling on the site.
2. **Maximum Number of Units:** No more than seven (7) bed and breakfast sleeping rooms per establishment shall be allowed.
3. **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 establishment is in operation.
4. **Kitchen Facilities:** There shall be no cooking facilities for the bed and breakfast establishment separate from the cooking facilities which serve the principal residence. Food may be served only to the owners/managers and guests of the bed and breakfast establishment.
5. **Building Requirements:** A building used for a bed and breakfast establishment shall comply with the following minimum requirements:
  - A. There shall be at least two (2) exits to the outdoors.
  - B. Rooms used for sleeping shall have a minimum size of one hundred (100) square feet for two (2) occupants, plus and additional thirty (30) square feet for each additional occupant. Rooms shall be designed to accommodate no more than four (4) occupants.
  - C. Each sleeping room shall be equipped with a smoke detector.
6. **Parking:** Off-street parking shall be provided for bed and breakfast establishments, in accordance with this Ordinance. Off-street parking in the front yard is prohibited.
7. The number of bathrooms and septic system size shall meet Leelanau County Health Department requirements.

## **Section 7.03 Car Wash Facilities**

1. **Layout:** All washing activities shall be carried on within an enclosed building. Vacuuming activities shall be permitted in the rear yard only, provided such activities are located at least fifty (50) feet from adjacent residentially zoned or used property.
2. **Entrances and Exits:** Sufficient space shall be provided on the lot so that vehicles do not enter or exit the wash building directly from an adjacent street or alley. All maneuvering areas, stacking lanes, and exit aprons shall be located on the car wash parcel itself. Streets and alleys shall not be used for maneuvering or parking by vehicles to be serviced by the automobile wash.

#### **Section 7.04 Group Daycare, Childcare Center or Foster Care Facility**

1. All buildings shall be harmonious in appearance with the surrounding residential area and shall be similar in design and appearance to any other buildings on the same site.
2. A group day care home shall be allowed to operate between the hours of 6 am and 10 pm.
3. In the case of a group foster care facility (serving more than 6 persons) shall be so constructed, arranged and maintained as to provide adequately for the health, safety, and welfare of all occupants.
4. All facilities shall provide off-street parking to provide two guest spaces in addition to one for each employee for the shift with the greatest employment. The driveway may be used for this purpose.
5. Recreational areas associated with the facility shall be located in the rear yard.
6. Outdoor recreation areas for childcare centers or child day care facilities shall be fenced with a fence at least six (6) feet high.
7. A valid license from the State of Michigan for the given type of facility shall be required.

#### **Section 7.05 Kennels**

1. All kennels shall be operated in conformance with County and State regulations and shall be on sites of at least five (5) acres.
2. 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, which ever is greater.
3. Any fenced areas shall be screened from adjacent properties and/or roads with an opaque fence or a vegetated evergreen buffer at least six (6) feet in height.
4. The facility shall be so constructed and maintained that odor, dust, noise or drainage shall not constitute a nuisance or hazard to adjoining premises.
5. Animals shall be kept in a soundproof building between the hours of 10 p.m. and 8 a.m.
6. All principal use activities shall occur within an enclosed main building.

#### **Section 7.06 Manufactured Home Developments**

Manufactured home developments shall be subject to the following conditions:

1. Manufactured home developments shall be developed and licensed pursuant to the requirements of the Michigan Manufactured Housing Commission, under 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.

2. 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.
3. 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.

### **Section 7.07 Motels, Hotels and Inns**

1. Motels, Hotels and Inns shall have a minimum lot width of one hundred fifty (150) feet at the road line.
2. There shall be at least eight hundred (800) square feet of lot area per guest room.
3. Each unit shall contain at least a bedroom and bath and a minimum gross floor area of two hundred fifty (250) square feet.
4. Parking and stacking spaces shall be provided subject to the **Section 3.16 - Off Street Parking Standards**.

### **Section 7.08 Planned Unit Development, PUD**

#### **1. Intent and Purpose.**

As used in this section, “planned unit development” (or PUD) means cluster zoning, planned development, community unit plan, planned residential development, and other planned development. The purposes of a PUD are:

- A. To accomplish the objectives of the zoning ordinance through a land development project review process based on the application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the project area.
- B. To permit flexibility in the regulation of land development.
- C. To encourage innovation in land use in variety and design, layout, and type of structures constructed.
- D. To achieve economy and efficiency in the use of land, natural resources, energy, and the provision of public services and utilities.
- E. To encourage useful open space and provide better housing, employment, and shopping opportunities particularly suited to the needs of the residents of the village.

2. **Use and Area Regulations.**

A. Permitted Uses. Planned unit developments shall be permitted in any zoning district according to the following:

- 1) **Residential Districts (GR, MR, VR)** - Except as noted, PUD uses shall be limited to the range of uses provided for within the underlying zoning district classification. Such uses may be placed either singularly or in combination. Institutional and commercial uses determined by the Planning Commission to be compatible with the character of the PUD and surrounding neighborhood may also be permitted.
- 2) **Commercial and Residential Districts (FS and GC)** - Except as noted, PUD uses may include any of the range of uses provided for within the underlying zoning district classification. Such uses may be placed either singularly or in combination. Residential uses determined by the Planning Commission to be compatible with the character of the PUD and surrounding neighborhood may also be permitted.
- 3) **Light Industrial District** - Except as noted, PUD uses shall be limited to the range of uses provided for within the underlying zoning district classification. Such uses may be placed either singularly or in combination. Commercial uses determined by the Planning Commission to be compatible with the character of the PUD and surrounding area may also be permitted provided the total area devoted to commercial uses shall not exceed twenty (20) percent of the PUD site area.

In approving a PUD with mixed uses, the Planning Commission may stipulate the sequence in which said uses, or portions thereof, are constructed.

B. Area Regulations. Except to the extent that a PUD or a portion of a PUD is subject to area regulations mandated by a state agency, a PUD shall meet the following area regulations.

- 1) Perimeter Setbacks. The setback maintained along the perimeter of the PUD shall equal or exceed the required setback of the underlying zoning district, provided:
  - (a) Any portion of a commercial or industrial use shall maintain a perimeter setback of not less than twenty (20) feet from any adjoining or abutting property which is in a residential zoning district.
  - (b) With the exception of access drives, parking areas, lighting, sidewalks and curbing, the perimeter setback shall be landscaped.
- 2) Open Space. A PUD project shall have open space of no less than twenty (20%) percent of the entire project area. This required open space shall

be dedicated to the public or set aside for the common use of the owners and users within the PUD. Dedicated open space does not include parking lots, roads, and public rights-of-way, but may include flood plain areas and wetlands up to a maximum of thirty (30%) percent of the required open space and landscape area devoted to perimeter setbacks.

- 3) Height Regulations. The height of all buildings and structures within a PUD project shall not exceed the height limit of the underlying zoning district; provided, however, the Planning Commission may authorize an increase in height upon a finding that the proposed increase will not be detrimental to the public health, safety, or welfare of the PUD occupants, the area surrounding the PUD project site, and the village as a whole. This increase, however, shall not exceed fifty (50) percent of the underlying zoning district height limit. In authorizing an increase in height, the Planning Commission may require increased building setbacks and/or other conditions determined necessary to secure the public health, safety, or welfare and to ensure compatibility of the project with the surrounding area. In no case shall an increase in height be permitted if the increase will result in conditions beyond the service capability of the village pursuant to emergency fire suppression and other emergency services.

For purposes of this subsection, the height of a building or structure shall be measured from the average grade of the property at the base of the building or structure to the highest point of the building or structure.

- 4) Other Dimensional Regulations. To promote creativity and flexibility in site design, the Planning Commission may, subject to the following limitations, modify the other dimensional regulations, as required by the underlying zoning district, including but not limited to minimum lot size, density, and setbacks within the PUD project, upon a finding that the proposed dimensional regulations will not be detrimental to the public health, safety, or welfare of future occupants of the PUD, the surrounding neighborhood, or the village as a whole.

Any reductions by the Planning Commission shall be limited as follows:

- (a) Residential density shall not be reduced by more than thirty (30) percent of the underlying zoning district standard.
- (b) Setbacks shall not be reduced by more than fifty (50) percent of the underlying zoning district requirements. Perimeter setbacks as required by the PUD regulations may not be reduced.
- (c) Required parking shall not be reduced by more than sixty (60) percent of the parking normally required of the proposed use. In no case shall a single-family home, mobile or modular home, or other such detached single-family dwelling have less than two (2) on-site (off-street) parking spaces. In reducing the required parking, the Planning Commission may require the reservation of a portion of the PUD site for future parking.

- (d) If required sidewalks and/or sidewalk easements shall not be reduced.
- (e) The terminus of any street within a PUD shall end in a *cul de sac* designed, built, and maintained in accordance with County Road Commission and Village street standards. Hammer-head street ends are prohibited.

Prior to approving a reduction in dimensional regulations, the Planning Commission may require the Applicant to demonstrate through *bonafide* documentation, including but not limited to traffic studies, environmental impact studies, market needs assessments, and infrastructure impact studies, that the reduction will not result in significant impacts to the PUD project and PUD occupants, the surrounding area, and the village as a whole.

**3. Planned Unit Development Eligibility Requirements.**

To be eligible for a planned unit development, a parcel shall meet all of the following:

- A. The parcel shall be one (1) acre or more in area. Provided, however, if the proposed PUD will contain a mixture of residential and non-residential uses, the parcel shall be two and one half (2.5) acres or more in area. For purposes of this subsection, recreational amenities, and commercial activities customarily incidental to a residential use shall not be considered non-residential uses.
- B. The parcel on which the proposed PUD will be located shall be under single ownership, or the PUD application shall be filed jointly by all property owners.
- C. The proposed uses within the PUD shall be consistent with the Village of Empire Master Plan for the subject parcel.

4. The Pre-application conference provisions of **Section 5.03.3** are hereby incorporated by reference.

**5. PUD Application Requirements.**

An applicant seeking approval of a PUD shall submit a complete application to the Zoning Administrator. The Zoning Administrator shall then forward the application to the Planning Commission for its review under the procedures of this section. The application shall include all of the following:

- A. A completed application form, supplied by the zoning administrator.
- B. Payment of a fee as established by resolution of the Village Council.
- C. A narrative statement describing:
  - 1) The objectives of the proposed PUD and how they relate to the intent of the zoning ordinance as described in subsection (A), above.
  - 2) The relationship of the proposed PUD to the Village of Empire Master

Plan.

- 3) Phases of development, if any, and the approximate time frame for the start and completion of construction of each phase.
- 4) Proposed master deed, deed restrictions, covenants or similar legal instruments to be used within the PUD.
- 5) Anticipated dates for the start and completion of the PUD construction.
- 6) Substantial benefits to the community provided by the proposed PUD.
- 7) The location, type, and size of areas to be dedicated for common open space, utility easements, sidewalks and/or sidewalk easements.

D. Copies of the development plan as required under **Article 5 - Site Plan Review**. If the PUD is to be developed in phases, the development plan shall show all phases. The development plan shall contain the following information in addition to that listed in **Article 5 - Site Plan Review** and **Article 6 - Uses Subject to Special Use Permit**:

- 1) Required setbacks of the zoning districts.
- 2) Area of subject property to be covered by buildings.
- 3) Location and type of sanitary sewage disposal system.
- 4) Proposed methods of surface water drainage, including surface and subsurface facilities.
- 5) Location and type of proposed lighting on the site.
- 6) Percentage of the total site devoted to open space, the location of open space and the proposed uses of that open space.
- 7) Areas to be used for open space and recreation
- 8) Location of required sidewalks and/or sidewalk easements.

## 6. **Public Hearings.**

The Planning Commission shall hold a public hearing for all PUD requests, same as any other special use permit request. A notice of the uses subject to special use permit request and public hearing as required by the Michigan Zoning Enabling Act, Act 110 of Public Acts 2006, shall be provided. The notice shall be given not less than 15 days before the date the application will be considered. The notice shall describe the nature of the special use permit request; indicate the subject property, state when and where the public hearing on special use permit request will be held and when the special use request will be considered, and when and where the written comments will be received concerning the request. Notices shall be provided as follows:

- A. One notice shall be published in a newspaper which circulates generally in the Village.

- B. Notice shall be sent by mail or personal delivery to the owners of the subject property.
- C. Notice shall be sent by mail or personal delivery to the owners of property within 300 feet of the boundary of the subject property, regardless of whether the property is located inside the Village.
- D. Notice shall be sent by mail or personal delivery to all the occupants of structures within 300 feet of the boundary of the subject property, regardless of whether the property is located inside the Village. If a structure contains more than one dwelling unit or spatial area, 1 occupant of each dwelling unit or spatial area shall receive notice.

7. **Planning Commission Review of PUD and Recommendations.**

Following the public hearing the Planning Commission shall review the PUD application and shall approve, deny or approve with conditions the PUD application based on the standards for PUD approval contained in subsection (8) below. The Planning Commission's recommendation shall be in writing and shall include findings of fact, based on the evidence presented at the public hearing, on each standard.

8. **Standards for PUD Approval; Conditions; Waiver of PUD Standards.**

- A. As a Use Subject to Special Use Permit, a PUD shall be subject to the review and approval procedures specified in **Article 5: Site Plan Review**, and **Article 6: Uses Subject to Special Use Permit** and the following General Standards:
- B. General Standards. The Planning Commission shall recommend approval, or approval with conditions, a PUD application if the Planning Commission finds that the proposed PUD meets all of the following:
  - 1) The planned unit development shall be consistent with the Village of Empire Master Plan.
  - 2) The planned unit development shall be designed to preserve public vistas and existing important natural, historical, and architectural features of significance within the development.
  - 3) The planned unit development shall be designed so that its pedestrian, non-motorized and automobile circulation systems are safely and conveniently integrated with those of abutting property and any linear trail or park systems intersecting or abutting such development.
  - 4) The planned unit development shall not result in any greater storm water runoff to adjacent property after development, than before. The open space shall be provided with ground cover suitable to control erosion, and vegetation which no longer provides erosion control shall be replaced.
  - 5) The design of the planned unit development shall exhibit a reasonably harmonious relationship between the location of buildings on the site

relative to buildings on lands in the surrounding area; and there shall be a reasonable architectural and functional compatibility between all structures on the site and structures within the surrounding area. It is not intended that contrasts in architectural design and use of facade materials is to be discouraged, but care shall be taken so that any such contrasts will not be so out of character with existing building designs and facade materials so as to create an adverse effect on the stability and value of the surrounding area.

- 6) The design of the planned unit development shall ensure that outdoor storage of garbage and refuse is contained, screened from view, and located so as not to be a nuisance to the subject property or neighboring properties.
- 7) The planned unit development shall be designed such that phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility services, drainage or erosion control.
- 8) Nothing here in shall relieve the PUD applicant from complying with all applicable local, state and federal regulations.

B. The Village Council may hold an additional public hearing prior to a decision to approve, approve with conditions or deny the application.

9. **Conditions.** - See **Section 8.03**

10. **Continuing Adherence to Approved PUD Application.**

Any property owner who fails to develop and maintain an approved PUD according to the approved PUD application and conditions, if any, shall be deemed in violation of the provisions of this Ordinance and shall be subject to the penalties provided in **Section 8.07.3** of this Ordinance.

11. **Recording of Action.**

The applicant shall record an affidavit acceptable to the village attorney with the Leelanau County Register of Deeds that contains the full legal description of the project site, specifies the date of final village approval, specifies the description or identification number which the village has assigned to the PUD project, and declares that all improvements will be carried out in accordance with the approved PUD application. If the Planning Commission approves an amendment to the PUD, the applicant shall record an amended affidavit acceptable to the village attorney that contains all of the information described above, describes the amendment, specifies the date the Planning Commission approved the amendment, and declares that the improvements will be carried out in accordance with the approved PUD, as amended. Finally, all deed restrictions and easements shall be duly filed with the Leelanau County Register of Deeds and copies of recorded documents filed with the Zoning Administrator.

12. **Amendment of an Approved Planned Unit Development.** – See **Section 6.02.6**

13. **Expiration of Approved PUD; Extension.**

A. An approved PUD shall expire one (1) year following final approval by the Planning Commission unless substantial construction has begun on the PUD project prior to that time or the property owner applies to the Planning Commission for an extension prior to the expiration of the PUD. The Planning Commission may grant one (1) extension of an approved PUD for an additional one (1) year period if it finds:

- 1) The property owner presents reasonable evidence that the development has encountered unforeseen difficulties beyond the control of the property owner; and
- 2) The PUD requirements and standards that are reasonably related to the development have not changed.

B. If the PUD approval expires pursuant to subsection (A) above, no work pursuant to the PUD plan may be undertaken on the project until a new PUD approval is obtained following the procedures for a new PUD application. In addition, if the PUD approval expires, the property shall again be subject to the zoning classification of the property which existed prior to the PUD approval as if no PUD approval had ever been granted.

14. Subject to **Section 8.03**, the Planning Commission may impose reasonable conditions on the approval of the PUD and on the final approval of the site plan for the PUD.

### **Section 7.09 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:

1. 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.

### **Section 7.10 Sand and Gravel Extraction**

1. From and after the effective date of this Ordinance, it shall be unlawful for any person, firm, corporation, partnership, or any other organization or entity to strip greater than 500 cubic yards of topsoil, sand, clay and gravel or similar material, or to use lands for filling within the Village without first submitting a site plan and procuring approval from the Planning Commission.

2. A separate site plan approval will not be required for excavation or fill activities associated with building construction pursuant to a duly issued building permit. However, where sand, gravel, topsoil, or other substances are removed from the site where found and taken to another site, site plan approval is needed for the receiving site.
3. Site plan application. A separate site plan shall be required for each separate excavation or fill site. In addition to the site plan requirements listed in **Section 5.03 - Site Plan Review (All Districts)**, a site plan prepared under this section shall also include:
  - A. Names and addresses of parties interested in said premises setting forth their legal interest in said premises.
  - B. Full legal description of the premises where operations are proposed.
  - C. Detailed proposal as to method of operation, what type of machinery or equipment will be used, and estimated period of time that such operation will cover.
  - D. Detailed statement as to exactly what type of material is proposed to be extracted or deposited.
  - E. Proposed method of filling excavation and/or other means to be used to allow for the reclamation of lands to a usable purpose.
  - F. Such other information as may be reasonably required by the Planning Commission to base an opinion as to whether the site plan should be approved or not.
4. The sand and gravel operations application shall provide information to confirm compliance with the following standards:
  - A. **Hours of Operation.**

The operation of mechanical equipment of any kind shall be limited by the day and/or the hour. Site Specific Hours of Operation for mining, processing and reclamation activities must be approved, but shall not exceed the following schedule Monday through Saturday, excluding legal holidays, during the following times:

    - 1) Mining or extracting operations, and processing and stockpiling of aggregates shall occur only between the hours of 8:00 a.m. and 6:00 p.m.
    - 2) Loading and hauling operations shall occur only between the hours of 8:00 a.m. and 8:00 p.m.
    - 3) Equipment maintenance and repair shall occur only between the hours of 8:00 a.m. and 9:00 p.m.
  - B. **Screening.**

Fences, berms, walls, and visual screening devices may be required, if necessary, in the opinion of the Planning Commission, to protect adjoining properties and/or ensure the health, safety and welfare of persons in the vicinity of the site. Factors of safety and aesthetics shall be addressed.

- C. **Noise, Dust, Debris.**  
All processing equipment and activities and all storage areas shall be treated, covered, muffled, or otherwise controlled to prevent excessive dust, debris, or other impacts beyond the property line. Noise levels shall not exceed 60 dBA at the property line. Any trucks hauling material to or from the site shall be enclosed or covered to prevent materials from blowing or falling out of the trucks.
- D. **Groundwater Impact.**  
Extractive operations shall be managed and designed so as to not cause any negative impact on groundwater and potable water supply, whether as a result of contamination or reduction in the rate and volume of flow.
- E. **Road Impact.**
- 1) Extractive operations shall be managed and designed so as to have minimum negative impact on existing roadways. The truck route to be utilized in the accessing of the extraction site shall be designated and subject to approval by the Planning Commission.
  - 2) Dust caused by truck traffic of the entrance drive to be treated as needed with dust suppression material.
- F. **Reclamation Plan.**  
A reclamation plan, which shall include all information required by any State or federal agency having jurisdiction and which includes the following:
- 1) Description and location of each phase, number of acres included in each phase, estimated starting and termination dates for each phase and the amount of time that will be required to complete the entire reclamation operation. All areas shall be reclaimed progressively as the mining in that area is completed. Reclaimed areas shall be reasonably natural and inconspicuous, lacking in hazards and in a condition that the area can be reused for an allowable use in the district in which the site is located. All slopes and banks shall be graded to angles that do not exceed those found in the natural topography of the surrounding areas, and the banks shall be treated to prevent erosion.
  - 2) Provisions for grading, drainage, revegetation, and stabilization that will minimize soil erosion, sedimentation and public safety problems.
  - 3) Description of proposed future land uses.
  - 4) Description of plans for disposition of all structures, roads, drains or related facilities after cessation of the extractive operation.
  - 5) A plan for disposal or treatment of all harmful or toxic materials found in any formations penetrated by the extractive operation or produced during the processing of minerals on the site and of chemicals or materials used during the extractive, processing or reclamation operations.
  - 6) All information required as part of a reclamation plan that is required by state or federal law.

## **Section 7.11 Sexually Oriented Business**

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 Village, 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 Village 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 Village 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 Village intends said portion to be disregarded, reduced, and/or revised so as to be recognized to the fullest extent possible by law. The Village 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.

1. 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.
2. No sexually oriented business shall be established on a parcel within two hundred fifty (250) feet of any existing residence.
3. The proposed use shall conform to all specific density and setback regulations, etc. of the zoning district in which it is located.
4. The proposed use must meet all applicable written and duly promulgated standards of the Village of Empire 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.
5. 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.
6. Any sign or signs proposed for the sexually oriented business must comply with the Village Sign Ordinance, and shall not otherwise include photographs, silhouettes, drawings, or pictorial representations of any type, or include animated or flashing illumination.
7. 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.”

8. 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.
9. Hours of operation shall be limited to 12:00 PM (noon) to 12:00 AM. (Midnight)
10. All off-street parking areas shall be illuminated during all hours of operation of the sexually oriented business, and until one hour after the business closes.
11. 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:
  - A. Shall be handicap accessible to the extent required by the Americans With Disabilities Act;
  - B. Shall be unobstructed by any door, lock, or other entrance and exit control device;
  - C. 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;
  - D. Is illuminated by a light bulb of wattage of no less than 25 watts;
  - E. Has no holes or openings in any side or rear walls.

**12. 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.

- A. If the Planning Commission determines 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.
- B. If the Planning Commission determines that the application is complete, it shall within forty five (45) days of said determination make and recommend specific findings with respect to whether the proposed sexually oriented business is in compliance with the standards designated in **Section 7.11 (1-11)**. After reviewing the Planning Commission recommendation, the Village Council shall make and adopt findings of fact with respect to a proposed sexually oriented business and either approve or deny the issuance of a special approval for the

same within thirty (30) days. If an approval, approval with conditions or denial is not made in the specified timeframe, then the special approval shall be deemed to have been approved.

### **Section 7.12 Storage Facilities and Warehouses.**

Storage uses, 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 shall be required per subparagraph 3) of this section.
2. Proposed storage buildings shall be positioned to the rear of other approved non-storage or non-warehousing buildings.
3. Landscape screening, to effectively shield storage buildings from bordering public roads, in all seasons, shall be installed per an approved Landscape Plan. The approved landscaping shall be maintained, in a healthy state, including plant replacement as needed, to provide effective screening.
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, provided such is enclosed within a building or within an obscuring wall or fence on those sides abutting all Residential Districts and on any yard abutting a public thoroughfare.

### **Section 7.13 Telecommunication Towers, Antennae and Facilities**

Antenna towers and masts for cellular phone and other personal or business communications services shall be authorized as a special use by the Planning Commission. Antenna towers and masts erected and operated as a residential accessory use, and not more than thirty five (35) feet in height as measured between the tower's base at grade and its highest point erected, are exempt from the provisions of this Section. In considering such authorization, the Planning Commission shall apply the standards of **Article 5 - Site Plan Review**, and the following standards:

1. The Applicant shall provide documentation to the Planning Commission that clearly establishes the legal ownership of the tower. The applicant, its agents, successors, and assigns shall report to the Planning Commission any changes in the legal ownership of the tower within thirty (30) days of the effective date of the change.
2. The applicant shall provide documentation to the Planning Commission documenting the need for a new tower and analysis of alternative options, such as co-location of an existing tower or structure.
3. The application for special use approval for the tower shall include a visual impact analysis, prepared by the applicant, which includes graphic depictions of the anticipated visual

appearance of the tower from important vantage points in the surrounding area. Methods used in preparing the analysis shall be reviewed and approved by the Zoning Administrator.

4. A cellular phone or other personal and business communications services antenna tower shall be exempt from building height limits established by zoning district regulations, provided that the tower height shall not exceed the minimum height necessary to serve its intended functions. Tower height shall not exceed thirty five (35) feet.
5. Whether or not it is feasible to provide equivalent service by locating the antenna on an existing tower or other existing structure in the Village or in neighboring communities.
6. The tower and any ancillary building housing equipment needed for operation of the tower shall not exceed the floor area and height minimally necessary for such equipment, and shall be of a size, type, color, and exterior materials which are aesthetically and architecturally compatible, such as tree style tower, with the surrounding area, and as minimally obtrusive as possible. Landscape screening may be required by the Planning Commission to accomplish screening of ancillary equipment buildings.
7. The applicant shall provide documentation of any lighting to be installed on the tower. If tower lighting is required or proposed, the tower may not be approved unless the Planning Commission determines that it will not have a significant adverse impact on properties and residents of the surrounding area.
8. Towers shall be painted so as to be as unobtrusive as possible. The painting of towers in alternate bands of orange and white shall be permitted only if specifically required by Federal Communications Commission (FCC) or Federal Aviation Administration (FAA) regulations. If alternate band painting is required by FCC or FAA regulations, the applicant shall provide documentation of such requirements and regulations.
9. The applicant shall provide documentation of conformance with any Federal Communications Commission and Federal Aviation Administration regulations.
10. The owner/operator of the tower shall agree to permit use of the tower by other personal or business communications services providers, including local government agencies, on reasonable terms, so long as such use does not interfere with the owner/operator's reasonable use of the tower.
11. As a condition of approval, the Planning Commission may require an owner to deposit funds in escrow with the Village, or provide an insurance bond satisfactory to the Village's Attorney to assure the removal of towers and masts as prescribed in this Section. If required, such escrow deposit or insurance bond shall be in an amount equal to one and one-quarter (1.25) times the estimated cost of removal of the tower at the time of approval. Such escrow deposit or bond shall be maintained by successor owners.
12. If the tower ceases operation for its original use or is abandoned for any reason, the Village may order its removal from the site by the owner of the tower within three (3) months of notification by the Village. If the cost exceeds the amount held in escrow, the current owner shall be responsible for additional costs.

13. If the height required for the tower to serve its intended function decreases from the installed height due to technological advancement, additional tower installations at other locations, or other factors, the Village may order that the tower be lowered to such decreased minimum height.
14. The tower and any supporting or appurtenant structures shall be no closer to any dwelling than the distance equal to 1.5 times the height of the tower measured from its base at grade to its highest point of elevation.

#### **Section 7.14 Veterinary Clinic/Animal Hospital**

1. All veterinary clinics and animal hospitals shall be operated in conformance with County and State regulations.
2. Any fenced areas shall provide screening from adjacent properties and/or roads with an opaque fence at least six feet in height or a vegetated evergreen buffer at least five (5) feet in height.
3. The facility shall be so constructed and maintained that odor, dust, noise or drainage shall not constitute a nuisance or hazard to adjoining premises.
4. Animals shall be kept in a soundproof building between the hours of 10 p.m. and 8 a.m.
5. All principal use activities shall occur within an enclosed main building.

## Article 8: Administration and Enforcement of Ordinance

### Section 8.01 – Zoning Administrator

The provisions of this Ordinance shall be administered and enforced by the Village Zoning Administrator, appointed by and serves at the pleasure of the Village Council on such terms and conditions and at such rate of compensation as said Council shall determine.

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

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

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

### Section 8.02 – Land Use Permit

1. No building or structure subject to the provisions of this Ordinance shall hereafter be erected, structurally altered, reconstructed, used, or moved until a land use permit application has been filed with the Village Zoning Administrator and a land use permit has been issued by the Zoning Administrator, except as otherwise permitted for in this ordinance. No land use permit shall be required for any lawful use of any building or structure in existence as of the adoption date of this Ordinance. No land use permit shall be required for an accessory structure less than 100 sf in size.
2. The application shall be signed by the owner of the premises or his agent and shall certify that all provisions of this Ordinance and other applicable laws and requirements are to be complied with. Any application requiring approval from the Planning Commission (see, for example, Article 5-Site Plan Review) must be submitted not less than thirty (30) days prior to a regularly scheduled meeting for consideration at that Planning Commission meeting. The application shall be accompanied by:
  - A. A site plan (per **Section 5.03.4**), if required, or a sketch in duplicate, in a scale sufficient to clearly detail, as determined by the Zoning Administrator, the location and dimensions of the premises including the boundary lines of all parcels of land under separate ownership contained therein; the size, dimensions, location on the premises, and height of all buildings, structures or other impervious surfaces in existence, to be erected and/or altered; the width and alignment of all abutting streets, highways, alleys, utility locations, easements and public open spaces; the front yard dimensions of the nearest building on both sides of the proposed building or structure; the location and dimensions of sewage disposal facilities both on adjoining land or lots and those to be erected on the lot under consideration; and

the location of all wells on adjoining lands or lots and those to be erected on the lot under consideration.

- B. Properties under two (2) acres in size may be required to submit a legal survey, sealed by a professional surveyor (not a mortgage survey). The Zoning Administrator shall have the authority to require such a survey in the cases where there may be encroachment on the setbacks by the proposed structures or when the exact locations of lot lines are not known.
  - C. Copies of permits or waivers of permits by other agencies as may be required by statute and/or by the Zoning Administrator of this Ordinance.
  - D. Such other information as may be required to determine compliance with the Ordinance.
3. A land use permit shall not be issued until all other necessary permits required by statute have been obtained or waived with exception of those permits issued by the Leelanau County Building Department.
  4. The location of the property boundaries and all structures shall be staked on the ground for Zoning Administrator approval prior to the issuance of the land use permit.
  5. Any land use permit under which substantial construction has not started or if no substantial construction has been done in the furtherance of the land use permit, the land use permit will expire after the expiration of twelve (12) months from the date of issuance.

Every land use permit granted under this Section shall become null and void unless the excavation, construction, alteration, erection or extension shall have been commenced within twelve (12) months from the date of issuance of the permit; and every permit so granted shall further become null and void unless all exterior aspects of the construction, alteration, erection or extension shall have been completed within eighteen (18) months from the date of issuance of the permit.

However, an extension of time of no more than six (6) months for the commencement of construction or for the completion of construction may be granted by the Zoning Administrator upon proof and the Zoning Administrator's determination that an extension is justified.

6. The Zoning Administrator shall have the power to revoke or cancel any land use permit in case of failure or neglect to comply with the provisions of the Ordinance, or in the case of a false statement or misrepresentation made in the application. The owner shall be notified of such revocation in writing.
7. No land use permit shall be valid until the required fees have been paid. Except for an accessory building or structure less than 100 square feet in size, which does not require a land use permit pursuant to **Section 8.02.1** of this Ordinance, no separate fee shall be required for accessory buildings or structures when application thereof is made at the same time as the principal building or structure. Applications and petitions filed pursuant to the provisions of this Ordinance shall be accompanied by the filing fees as specified by the

Village Council.

### **Section 8.03 – Conditions**

The Planning Commission, Zoning Board of Appeals or Village Council may attach reasonable conditions on discretionary zoning decisions under their jurisdiction. These conditions may include those necessary to ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to ensure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Any conditions imposed, however, shall meet all of the following requirements:

1. Be designed to protect natural resources, the health, safety, and welfare and social and economic well being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
2. Be related to the valid exercise of the police power, and purposes, which are affected, by the proposed use or activity.
3. Be necessary to meet the intent and purpose of the Zoning Ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

### **Section 8.04 – Rehearing Process**

1. Final Decisions: Except as provided in this section, a decision of the Planning Commission or Zoning Board of Appeals shall be final. The Planning Commission or Zoning Board of Appeals may grant a rehearing under exceptional circumstances for any decision made by it. Exceptional circumstances shall mean any of the following:
  - A. The applicant who brought the matter before the Planning Commission or Zoning Board of Appeals made misrepresentations concerning a material issue, which was relied upon by the Planning Commission or Zoning Board of Appeals in reaching its decision.
  - B. There has been a material change in circumstances regarding the Planning Commission or Zoning Board of Appeals' findings of fact, which occurred after the public hearing.
  - C. The Village attorney by written opinion states that in the attorney's professional opinion the decision made by the Planning Commission or Zoning Board of Appeals or the procedure used in the matter was clearly erroneous.
  - D. Any other exceptional circumstance as determined by the Planning Commission or Zoning Board of Appeals.
2. Rehearing Procedure: A rehearing may be requested by the applicant or by the Zoning

Administrator, or a rehearing may be granted by the Planning Commission or Zoning Board of Appeals on its own motion.

- A. A request for a rehearing which is made by an applicant must be made within twenty-one (21) days from the date of approval of the Planning Commission's or Zoning Board of Appeals' minutes regarding the decision for which the rehearing is being requested.
- B. A request for a rehearing made by the Zoning Administrator or a rehearing granted by the Planning Commission or Zoning Board of Appeals on its own motion may be granted at any time as long as the applicant has not been prejudiced by any delay.
- C. Whenever the Planning Commission or Zoning Board of Appeals considers granting a rehearing, it shall provide written notice to the applicant that a rehearing will be considered. The notice may be served upon the applicant by first class mail at the applicants' last known address, or may be served personally on the applicant. The notice must be served at least nine (9) days before the time set for the hearing if served by mail, or at least seven (7) days before the time set for the hearing if served by personal service. Service by mail shall be complete upon mailing. In addition to serving the above notice on the applicant, all other notice requirements for the type of decision being heard shall be completed before the Planning Commission or Zoning Board of Appeals holds a hearing at which it considers whether to grant a rehearing.
- D. If the Planning Commission or Zoning Board of Appeals grants a rehearing, then the rehearing shall not be held until all notice requirements for the type of decision being reheard have been satisfied.

### **Section 8.05 – Fees**

- 1. To assist in defraying the costs of investigating, reviewing and administering zoning applications, appeals, rezoning requests from individual property owners, and other types of decisions which result in extra costs to the Village, the Village Council may from time to time adopt by resolution a fee schedule establishing basic zoning fees, such as those fees related to the following:
  - A. Land use permits
  - B. Special land use permits
  - C. Ordinance interpretations by the Zoning Board of Appeals: appeals of administrative interpretation or request for interpretation. Appeals and requests for interpretation initiated by the Village Council, the Planning Commission, or the Zoning Administrator shall not be subject to a zoning fee.
  - D. Classification of unlisted property uses.
  - E. Requests to change a non-conforming use to another non-conforming use.
  - F. Requests for variances from the Zoning Board of Appeals.
  - G. Requests for rezoning of property by individual property owners or amendments

to the zoning ordinance text. Rezoning of property or text amendments initiated by the Village Council, the Planning Commission, or the Zoning Administrator shall not be subject to a zoning fee.

- H. Site plan reviews.
- I. Any other discretionary decisions by the Planning Commission or Zoning Board of Appeals.

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

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

### **Section 8.06 – Performance Guarantee**

In order to ensure that improvements are constructed in accordance with the terms and conditions of any site plan or special use permit approval, the Planning Commission may require, as a condition of said approval, the applicant to furnish the Village with a performance guarantee in the form of a cash deposit, certified check, irrevocable bank letter of credit, or surety bond acceptable to the Village in an amount equal to the estimated costs associated with the construction of public and site improvements. Public improvements mean by way of example and not limitation roads, parking lots, and water and sewer systems which are located

within the development or which the applicant has agreed to construct even though located outside the development. Site improvements mean landscaping, buffering, and the completion of conditions imposed by the Planning Commission, which are located within the development. For purposes of this section, the costs covered by the performance guarantee shall include all of the following: (1) the purchase, construction, and/or installation of the improvements, (2) architectural and engineering design and testing fees and related professional costs, and (3) an amount for contingencies consistent with generally accepted engineering and/or planning practice. The performance guarantee shall be deposited with the Village Clerk at or before the time the village issues the permit authorizing the development, or if the development has been approved in phases, then the performance guarantee shall be deposited with the Village Clerk prior to the commencement of construction of a new phase. The performance guarantee shall ensure completion of the public and site improvements in accordance with the plans approved by the Planning Commission. Any cash deposit or certified funds shall be refunded for the development or each phase of a multi-phase development in the following manner:

1. One-third of the cash deposit after completion of one-third of the public and site improvements;
2. Two-thirds of the initial cash deposit after completion of two-thirds of the public and site improvements; and
3. The balance at the completion of the public and site improvements.

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

## **Section 8.07 – Violations and Penalties**

### **Section 8.07.1 – Nuisance per se**

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

### **Section 8.07.2 – Inspection**

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

### **Section 8.07.3 – Penalties**

1. A violation of any provision of this Ordinance or any permit, license or exception granted hereunder, or a violation of any lawful order of the Zoning Administrator, Planning Commission, Zoning Board of Appeals or the Village Council issued in pursuance of this Ordinance shall be a municipal civil infraction. A “violation” includes any act which is prohibited by this Ordinance, any act which is made or declared to be unlawful by this Ordinance, any act which is made or declared to be an offense by this Ordinance, or any omission or failure to act where the act is required by this Ordinance.
2. The penalty for any violation of this Ordinance which is a municipal civil infraction shall be a civil fine in an amount not to exceed \$500.00, plus any costs, damages, expenses and other sanctions authorized under Chapter 87 of the Revised Judicature Act, being Public Act 236 of the Public Acts of 1961, as amended, [MCL 600.8701 et seq] and other applicable laws; provided, however, that the civil fine for any repeat violation by the same violator for the same offense shall, to the extent permitted by law, be greater than the fine imposed for a prior violation.
3. The Zoning Administrator, and any other official so designated from time to time by the Village Council, is the Village official authorized to issue municipal civil infraction citations for violations of this Ordinance.
4. As provided in Section 8302 of Chapter 83 of the Revised Judicature Act, being Public Act 236 of the Public Acts of 1961, as amended, [MCL 600.8302], in an action brought in district court the Village may ask the district court to issue and enforce any judgment, writ, or order necessary to enforce this Ordinance. In addition, the Village may invoke the jurisdiction of the circuit court to hear and decide claims based on nuisance or abate nuisances under Section 2940 of Chapter 29 of the Revised Judicature Act, being Public Act 236 of the Public Acts of 1961, as amended, [MCL 600.2940] or may invoke the jurisdiction of any court of competent jurisdiction to enforce any provision of this Ordinance.

### **Section 8.07.4 – Stop Work Order**

If construction or land uses are being undertaken contrary to a land use permit, the zoning enabling act, or this ordinance, the Zoning Administrator or Deputy of the Zoning Administrator or any other official authorized by the Village Council is authorized to post a stop work order on the property at a suitable location, such as at an entrance, in order to prevent the work or activity from proceeding in violation of the ordinance.

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

### **Section 8.08 – Conflicting Regulations**

In the interpretation of this Ordinance, if there exists a conflict with any other Village ordinances, the more stringent regulations shall control.

## **Article 9: Zoning Board of Appeals**

### **Section 9.01 - Creation and Membership**

1. The Zoning Board of Appeals (ZBA) shall perform its duties and exercise its powers as provided by the Michigan Zoning Enabling Act, Act 110 of Public Acts 2006, as amended, and in such a way that the objectives of this Ordinance may be achieved; that there shall be provided a means for competent interpretation and controlling flexibility in the application of this Ordinance; that the health, safety, and welfare of the public be secured. The Board shall consist of five (5) members as appointed by the Village Council, for three year terms.
2. The Village Council may appoint up to two (2) alternate members for three (3) year terms. An alternate member may be called on a rotating basis, to sit as a regular member of the ZBA in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular voting member of the board of appeals.
3. The regular and alternate members of the ZBA shall be selected from electors residing within the Village and shall be representative of the population distribution of the various interests present in the Village. One of the regular members of the Zoning Board of Appeals shall be a member of the Planning Commission, and one regular member may be a member of the Village Council, but that council member shall not serve as the chairperson of the ZBA. An employee or contractor of the Village may not serve as a member of the ZBA.
4. The terms of office for members appointed to the ZBA shall be for 3 years, except for members serving because of their membership on the Planning Commission or Village Council, whose terms shall be limited to the time they are members of those bodies. When members are first appointed, the appointments may be for less than 3 years to provide staggered terms. A successor shall be appointed no more than 1 month after the term of the preceding member has expired. Vacancies for unexpired terms shall be filled for the remainder of the term.
5. The ZBA shall not conduct business unless a majority of the regular members of the ZBA are present.

### **Section 9.02 - Organization and Procedures**

#### **Section 9.02.1 - Rules or Procedures**

The ZBA shall adopt its own rules or procedures as may be necessary to conduct its meeting and carry out its function. The ZBA shall choose its own chairperson, and in his/her absence, an acting chairperson.

### **Section 9.02.2 - Meetings**

Meetings shall be held at the call of the chairperson and at such times as the ZBA may determine. All meetings by the Board shall be open to the public. The Board may declare any meeting, or part of any meeting, a study meeting to pursue matters of business without comment or interruption from the public in attendance.

### **Section 9.02.3 - Minutes**

Minutes shall be recorded of all proceedings, which shall contain evidence and date relevant to every case considered, together with the votes of the members and the final disposition of each case. Such minutes shall be filed in the office of the Village Clerk and shall be made available to the general public. All records of the Board's action shall be taken and recorded under the Clerk's direction.

### **Section 9.02.4 - Notice of Hearings**

Following receipt of a written request concerning an appeal of an administrative decision, a request for an interpretation of the zoning ordinance or a request for a variance, the ZBA shall hold a public hearing, after giving the following applicable notice:

1. For an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the Village and shall be sent to the person filing the appeal and to the Zoning Administrator or other administrative agency or official whose decision is being appealed no less than fifteen (15) days before the public hearing. In addition, if the appeals of an administrative decision involves a specific parcel, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the boundary of the property in question. If a tenant's name is not known, the term occupant may be used.
2. For a request seeking an interpretation of the zoning ordinance, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the Village and shall be sent to the person requesting the interpretation no less than fifteen (15) days before the public hearing. In addition, if the request for an interpretation involves a specific parcel, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the boundary of the property in question. If a tenant's name is not known, the term occupant may be used.
3. For a variance request, a notice stating the nature of the variance being requested and the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the Village and shall be sent to the person requesting the variance no less than fifteen (15) days before the public hearing. In addition, a notice stating the nature of the variance being requested and the time, date, and place of the public hearing shall be sent by first class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in

question and to the occupants of all structures within 300 feet of the boundary of the property in question.

#### **Section 9.02.5 - Exercising Powers**

The ZBA may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Zoning Administrator from whom the appeal is taken. The ZBA shall return a decision on a case within a reasonable time.

#### **Section 9.02.6 - Majority Vote**

A concurring vote of the majority of the members of the ZBA shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which they are required to pass, or to effect any variation in this Ordinance. A concurring vote of 2/3 of the members shall be necessary to grant a variance for a use not otherwise permitted by the ordinance in a particular district.

#### **Section 9.03 - Jurisdiction**

1. An appeal concerning the administration of the provisions of this Ordinance may be taken to the ZBA 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 Zoning Administrator 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 Zoning Administrator.
3. The ZBA may grant variances as provided for in **Section 9.05 - 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 Village. The appellant shall file with the 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 ZBA 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.
8. The ZBA has no jurisdiction to hear appeals from Planning Commission decisions concerning special approvals or planned unit developments.

## **Section 9.04 - Stay**

An administrative 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 land use 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. Provided, however, this section shall not apply to an administrative decision to take enforcement action for alleged violations of this Ordinance.

## **Section 9.05 - Variances**

### **1. Dimensional Variances.**

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

- A. 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, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
- B. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created).
- C. 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 a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.
- D. 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.
- E. 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.

### **2. Use Variances.**

The ZBA may grant use variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in unnecessary hardship. To establish unnecessary hardship, the applicant must establish all of the following:

- A. The building, structure or land cannot be reasonably used for any of the uses permitted by right or by special approval in the zoning district in which it is located.

- B. The need for the requested variance is due to unique circumstances peculiar to the applicant's property and not due to general neighborhood conditions.
- C. The proposed use of applicant's property will not alter the essential character of the neighborhood.
- D. The need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).

#### **Section 9.06 - Unlisted Property Uses**

When the proposed use of land or use of a structure is not specified in this Ordinance, the ZBA shall have the power upon written request of the property owner or Zoning Administrator to classify the unlisted property use. In determining the proper classification of an unlisted property use, the ZBA shall consider the characteristics of the proposed unlisted property use in relation to; similar and comparable uses listed in any zoning district, the stated intent of a zoning district and the requirements of the Village Master Plan. Once classified, the unlisted property use is subject to all applicable regulations pertaining to similar uses in the zoning district in which placed, including the regulations pertaining to uses subject to special use permit approval, if classified as such a use by the ZBA.

#### **Section 9.07 - Miscellaneous**

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

#### **Section 9.08 - State Law**

The provisions of this Ordinance relative to the Zoning Board of Appeals are adopted pursuant to and are subject to the provisions of Article VI [MCL 125.3601 et seq] of the Michigan Zoning Enabling Act, 2006 PA 110 [MCL 125.3101 et seq]. If there is any conflict between the provisions of this Article and the provisions of the Michigan Zoning Enabling Act, the provisions of the Michigan Zoning Enabling Act shall take precedence.

## Article 10: Adoption and Amendments

### Section 10.01 – Amendment to this Ordinance

1. The Village Council is authorized and empowered to cause this Zoning Ordinance to be amended, supplemented, or changed, pursuant to the authority and according to the procedures set forth in the Michigan Zoning Enabling Act, Act 110 of Public Acts 2006.
  - A. The regulations and provisions stated in the text of this Ordinance and the boundaries of zoning districts shown on the Village of Empire Zoning Map may be amended, supplemented or changed by action of the Village Council following a recommendation from the Village Planning Commission.
  - B. Proposals for amendments, supplements or changes may be initiated by the Village Council on its own motion, by the Village Planning Commission or by petition of one (1) or more owners of property to be affected by the proposed amendment.
  - C. The procedure to be followed for initiating and processing an amendment shall be as follows:
    - 1) Each petition by one (1) or more persons for an amendment shall be submitted by application to the Zoning Administrator on a standard form provided and shall be accompanied by the fee as prescribed by the Village Council. No part of such fee shall be returnable to a petitioner if the public hearing is held.
    - 2) The Zoning Administrator shall notify, in writing, the Village Clerk and Chair of the Planning Commission at or before the time s/he transmits the amendment request to the Planning Commission.
    - 3) The Planning Commission shall consider each proposal for amendment on particular factors related to the individual proposal and in terms of the likely effect on the community's physical development. The Planning Commission may recommend any additions or modifications to the original proposal.
    - 4) Before ruling on any proposal the Planning Commission shall conduct at least one (1) public hearing, notice of the time and place of which shall be given by publication in a newspaper of general circulation in the Village, not less than fifteen (15) days before the date of such hearing. Not less than 15 days notice of the time and place of such hearing shall also be given by mail to each public utility company, railroad, and airport manager within the zone affected who have registered to receive such notices. The notices shall include the places and times at which the tentative text and any map of the Zoning Ordinance may be examined and shall be verified by an affidavit of mailing or personal service.

If an individual or several properties (10 or fewer adjacent properties) are proposed for re-zoning, owners of the property (or properties) shall be given notice of the proposed re-zoning not less than 15 days prior to the hearing. Notice shall also be sent to all persons who own property within 300 feet of the subject property (or properties) and to occupants of all structures within

300 feet of the property (or properties).

If eleven or greater properties are proposed for re-zoning, a general notice of the public hearing on the matter shall be provided. Notice of the time and place of the public hearing, shall be given by publication in a newspaper of general circulation in the Village, not less than fifteen (15) days before the date of such hearing.

- 5) The Planning Commission shall review and apply the following standards and factors in the consideration of any re-zoning request.
  - a) Is the proposed rezoning consistent with the Village of Empire Master Plan?
  - b) Is the proposed rezoning reasonably consistent with surrounding uses?
  - c) Will there be an adverse physical impact on surrounding properties?
  - d) Will there be an adverse effect on property values in the adjacent area?
  - e) Have there been changes in land use or other conditions in the immediate area or in the community in general which justify rezoning?
  - f) Will rezoning create a deterrent to the improvement or development of adjacent property in accord with existing regulations?
  - g) Will rezoning grant a special privilege to an individual property owner when contrasted with other property owners in the area or the general public (i.e. will rezoning result in spot zoning)?
  - h) Are there substantial reasons why the property cannot be used in accordance with its present zoning classifications?
  - i) Is the rezoning in conflict with the planned use for the property as reflected in the master plan?
  - j) Is the site served by adequate public facilities or is the petitioner able to provide them?
  - k) Are there sites nearby already properly zoned that can be used for the intended purposes?
  - l) The community should evaluate whether other local remedies are available.
- 6) The Planning Commission shall submit a final report/recommendation to the Village Council along with a summary of the comments received at the public hearing.
- 7) The Village Council may hold additional public hearings if it considers it necessary or otherwise required. Notice of the hearing to be held by the Village Council shall be given in the same manner as required under the subsection (C) (4), above. The Village Council shall grant a hearing on a

proposed ordinance provision to a property owner who requests a hearing by certified mail, addressed to the Village Clerk. The Village Council may adopt any proposed amendment or refer back to the Planning Commission for a further report as prescribed by Section 401 of Public Act No 110 of 2006.

- 8) Once adopted by the Village Council, amendments to this Ordinance shall be filed with the Village Clerk, and one (1) notice of adoption shall be published in a newspaper of general circulation in the Village within fifteen (15) days after adoption.
- 9) No application for a rezoning which has been denied by the Village shall be resubmitted for a period of one (1) year from the date of the last denial, except on grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Village Planning Commission to be valid.

### **Section 10.02 – Declaration of a Zoning Moratorium**

Notwithstanding any other provision of this Zoning Ordinance, the Village Council may, by resolution, declare a moratorium on the issuance of any permit under this ordinance, the processing of any permit application hereunder, the processing of any rezoning request, the processing of any site plan review, special land use request, or the processing of any other application made under this zoning ordinance.

Such a moratorium may be declared by the Village Council only under the following conditions:

1. The Village Council finds, based on facts appearing in the public record before it, that such a moratorium is necessary to protect the public health, safety and welfare and that no other action short of imposing a moratorium can adequately protect the public health, safety and welfare;
2. The moratorium is for a limited period of time, not to exceed six (6) months, but may be extended for no more than one (1) additional six (6) month period upon a new and separate findings of fact required under subsection 1 above;
3. The moratorium is limited in its scope and area of application so as to only affect those matters and that area necessary to protect the public health, safety and welfare;
4. The resolution declaring the moratorium shall be published in a newspaper of general circulation within the Village;
5. The resolution declaring the moratorium shall specify the effective date of such moratorium which may be the date of publication or another date following such publication; and
6. The resolution declaring the moratorium shall be adopted by a vote of no fewer than five (5) members of the Village Council.

### **Section 10.03 - Enactment and Effective Date**

This Ordinance was adopted on October 26, 2006, by the Village of Empire Council and will be effective November 10, 2006. The foregoing Zoning Ordinance and Zoning Map were presented at a public meeting on August 24, 2006, and at an official public hearing before the Planning Commission on October 24, 2006.

2. Amendments or revision to this Ordinance or Map of Zoning Districts shall become effective on the eighth day after publication unless a later date is specified.