

**ELK RAPIDS TOWNSHIP  
ANTRIM COUNTY  
MICHIGAN  
ZONING ORDINANCE**



**Elk Rapids Township Planning Commission**

**Elk Rapids, Michigan**

# **ELK RAPIDS TOWNSHIP**

**ANTRIM COUNTY**

**MICHIGAN**

## **ZONING ORDINANCE**

**Adopted – May 29, 1979  
And as Re-adopted January 14, 2003  
With Amendments through August 18, 2022**

**Elk Rapids Township Planning Commission**

**Elk Rapids, Michigan**

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**To access the Zoning Ordinance on the Township web site**

\* Enter: [www.elkrapids.com](http://www.elkrapids.com)

\* Under **HOME**, Scroll Down and Click on: [Review...TWP Zoning Ordinance](#)

## AMENDMENTS

Amendments to the Elk Rapids Township Zoning Ordinance:

<b>ZONING AMENDMENT NUMBER</b>	<b>EFFECTIVE DATE</b>	<b>AMENDED CHAPTER OR SECTION</b>
2004-01	Jan 29, 2004	Sec 1.03-V-2
2004-02	Jan 29, 2004	Sec 2.19-D-7
2004-03	Jan 29, 2004	Sec 2.11
2004-04	Oct 28, 2004	Sec 1.03-DD, 1.03-QQ, 2.04, 3.06
2004-05	Oct 28, 2004	Chapter 4, 10
2005-01	Feb 24, 2005	Chapter Numbers
2005-02	Feb 24, 2005	Chapter 17
2005-03	Feb 24, 2005	Sec 19.08-B
2006-01	Apr 27, 2006	Sec 1.03, 2.02, 2.06, 3.02-B, 17.02-C, 7.02-1, 8.03-E, 8.04-E, 10.03-F
2006-02	May 25, 2006	Sec 13.02, 13.03
2007-01	Aug 23, 2007	Open Par., Sec 18.01, 18.05-B 18.09-D, 19.06-F-2 & 4, 19.07-C
2007-02	Aug 23, 2007	Sec 2.18-A, 2.18-B, 2.18-C-5, 2.18-D-3, 5 & 6, 2.19-A
2007-03	Aug 23, 2007	Sec 6.04, 7.05, 8.07, 9.03, 10.06, 11.06, 12.05, 13.04
2008-01	Jan 31, 2008	Sec 17.04-B-17
2008-02	Feb 28, 2008	Sec 6.01-N
2008-03	Nov 27, 2008	Sec 19.07
2008-04	Dec 25, 2008	Sec 1.03, 7.06
2009-01	Apr 30, 2009	Sec 18.01
2009-02	Sep 24, 2009	Sec 3.05, 3.05-F
2009-03	Dec 24, 2009	Sec 1.03, 15.04-D-1 & 15.07
2010-01	Aug 26, 2010	Chapter 16
2010-02	Aug 26, 2010	Chapter 18
2010-03	Aug 26, 2010	Sec 2.20, 2.21 & Table Cont.
2010-04	Aug 26, 2010	Sec 1.03 & 17.11-A
2012-01	Jul 26, 2012	Sec 1.03 & 2.19-G
2013-01	Jul 25, 2013	Sec 1.03 & 18.05-B
2013-02	Jul 25, 2013	Sec 2.06-C & D
2013-03	Jul 25, 2013	Sec 2.11-D
2014-01	Jun 26, 2014	Sec 2.11-A thru D
2015-01	Oct 29, 2015	Sec 1.03, 3.03-A, 6.01-O
2016-01	Jun 30, 2016	Sec 11.04-E, 11.05-A, 11.05-C-8, 12.01-B, 14.01-C
2016-02	Dec 29, 2016	Sec 1.03, 11.05-C, 11.05-C-3, 11.05-C-5, 17.05-C, 17.11-B
2018-01	Nov 29, 2018	Sec 2.11-C
2019-01	Dec 27, 2019	Sec 1.03, 6.01-B, 3.02-C, 3.03-A
2019-02	Dec 27, 2019	Sec 1.03, 6.01-P
2019-03	Dec 27, 2019	Sec 1.03, 2.22, Table Cont.
2019-04	Dec 27, 2019	Sec 1.03, 2.23, Table Cont.
2021-01	May 27, 2021	Sec 2.19-H
2021-02	May 27, 2021	Sec 2.11-C, C-1 & C-2
2022-01	Aug 18, 2022	Sec 2.11-A & B-1

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## **ELK RAPIDS TOWNSHIP ZONING ORDINANCE**

An Ordinance to provide for the establishment of Zoning Districts in Elk Rapids Township, Antrim County, Michigan in accordance with the provisions of the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, to provide for the administration of said Ordinance and penalties for the violation thereof. The People of the Township of Elk Rapids do ordain:

### **CHAPTER 1**

#### **TITLE, PURPOSE AND DEFINITIONS**

##### Section 1.01 - TITLE

This Ordinance shall be known as the Elk Rapids Township Zoning Ordinance adopted May 19, 1979, reformatted, with amendments through November 5, 2002, and as readopted January 14, 2003. If any section, clause, or provision of this Ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance. The Township Board hereby declares that they would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid.

- A. Conflicts - If any provision of the Elk Rapids Township Zoning Ordinance conflicts with this Zoning Amendment Ordinance, then the provisions of this Zoning Ordinance Amendment shall control.
- B. Effective Date - This Ordinance shall become effective seven (7) days after publication of same. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

##### Section 1.02 - PURPOSE

The fundamental purpose of this Ordinance is to promote the health, safety and welfare of the inhabitants of the Township by:

- A. Promoting the orderly development of the Township.
- B. Encouraging the use of land and resources in the Township in accordance with their suitability.
- C. Promoting the economic progress of the Township and to protect and enhance the property values thereof.
- D. Reducing the hazards to life and property, promoting safety in traffic and providing protection from the spread of fire and other hazards.

- E. Conserving the use of public funds for public improvement and services to conform with the most advantageous use of lands, properties and resources of the Township.

### Section 1.03 - DEFINITIONS

Unless otherwise specified herein, the terms used in this Ordinance shall be defined as follows:

**Access Easement** – A portion of land intended for the sole purpose of ingress/egress to a parcel. For the purpose of this Zoning Ordinance, an access easement shall be considered a private road, as defined herein.

### **Accessory Structures**

1. **Agricultural Structure** - A structure designed, constructed and used for agricultural purposes and/or for the storage and maintenance of agricultural equipment.
2. **Accessory Structure** - A structure on same lot with and of a nature customarily incidental and subordinate to the principal structure.
3. **Attached Accessory Structure** - An accessory structure attached by a common wall(s), foundation and under the same roofline of the principle structure.
4. **Detached Accessory Structure** - An accessory structure not attached and not made a part of the principle structure.

**Accessory Use** - A use on the same lot with and of a nature customarily incidental and subordinate to the principal use.

**Basement** -The floor of a building next below the principal or first floor. A basement shall not be counted as a story for the purpose of height regulations.

**Bed & Breakfast (Tourist Home) Establishments** -A single family building owned and occupied by a person(s) renting out not more than four (4) rooms for compensation to persons who do not stay more than seven (7) consecutive days.

**Billboard** - An outdoor sign advertising services or products, activities, persons or events which are not made, produced, assembled, stored, distributed, leased, sold, or conducted upon the premises upon which the billboard is located.

**Boarding or Lodging House** - A building other than a hotel where, for compensation and by pre-arrangement for definite periods, lodging, meals, or both are provided for three (3) or more but not exceeding twenty (20) persons.

**Building** - Any enclosed rigid structure having a roof supported by columns, walls, or other support used for the purpose of housing or storing of persons, animals or chattels or carrying on business activities or other similar uses.

**Condominium Act** - Michigan Public Act 59 of 1978 as amended

**Condominium Project** - Any land developed under the provisions of the Condominium Act.

**Condominium Unit** - That portion of a condominium project designed and intended for separate ownership interest and use, as described in the Master Deed regardless of type of use.

**Development Plan** - The documents and drawings required by the Zoning Ordinance necessary to insure that a proposed land use or activity is in compliance with local ordinances and state and federal statutes.

**Dwelling** - A building or portion thereof designed or used as a residence or sleeping place for one or more persons including one or two family or multiple dwellings for residential occupancy but not including house trailers, mobile homes, hotels, boarding and lodging houses, tourists courts, tourist homes, hunting or fishing cabins.

**Dwelling, Single Family** - A building containing not more than one dwelling unit designed for residential use, complying with the following standards:

1. It complies with the minimum square footage requirements of this ordinance for the zone in which it is located.
2. It has a minimum width across the main front, side and rear elevation of twenty (20) feet and complies in all respects with the Michigan State Construction Code as promulgated by the Michigan State Construction Commission under the provisions of 1972 P.A. 230 as amended, including minimum heights for habitable rooms. Where a dwelling is required by law to comply with any Federal or State standards or regulations for construction and where such standards and regulations for construction are different from those imposed by the State building code, then and in that event such Federal or State standard or regulation shall apply.
3. It is firmly attached to a permanent foundation constructed on the site in accord with the building code in effect, and shall have a wall of the same perimeter dimensions of the dwelling and constructed of such materials and type as required in the applicable building code for single-family dwellings. In the event that the dwelling is a mobile home, as defined herein, such dwelling shall be installed pursuant to the manufacturer's setup instructions and shall be secured to the premises by an anchoring system or devise complying with the rules and regulations of the Michigan Mobile Home Commission and shall have a perimeter wall as required above.

4. In the event that a dwelling is a mobile home as defined herein, each mobile home shall be installed with the wheels removed. Additionally, no dwelling shall have any exposed towing mechanism, undercarriage or chassis.
5. The dwelling is connected to a public sewer and water supply or to such private facilities approved by the local Health Department.
6. The dwelling contains a storage capability area in a basement located under the dwelling, in an attic area, in closet areas, or in a separate structure of standard construction similar to, or of better quality than the principal dwelling, which storage area shall be equal to 10% of the square footage of the dwelling or 100 square feet, whichever shall be less.
7. The dwelling contains no additions or rooms or other areas which are not constructed with similar quality workmanship as the original structure, including permanent attachment to the principal structure and construction of a foundation as required herein.
8. The dwelling complies with all pertinent building and fire codes. In the case of mobile home, all construction and all plumbing, electrical apparatus and insulation within and connected to said mobile home shall be of a type and quality conforming to the "Mobile Home Construction and Safety Standards" as promulgated by the United States Department of Housing and Urban Development, being 24CFR 3280, and as from time to time such standards may be amended. Additionally, all dwelling shall meet or exceed all applicable roof snow load and strength requirements.
9. The foregoing standards shall not apply to a mobile home located in a licensed mobile home park except to the extent required by state or federal law or otherwise specifically required in this ordinance.
10. All construction required herein shall be commenced only after a building permit has been obtained in accordance with the applicable building code provisions and requirements.

**Dwelling, Two Families** - A building consisting of two dwelling units occupied exclusively by two families living independently of each other.

**Essential Services** - Essential services shall mean the erection, construction, alteration or maintenance by public utilities, municipal departments or commissions, or any governmental agencies, of underground or overhead gas, electrical, steam or water transmission or distribution systems, collection, communication, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, electric substations, telephone exchange buildings, gas regulator stations, and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of utility service by such public utilities, municipal departments, commissions or any governmental agencies or for the public health, safety and welfare.

**Family** - An individual or two (2) or more persons related by blood or marriage, or a group of not more than five (5) persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling.

**Farm** - The land, plants, animals, buildings, structures, including ponds used for agricultural or agricultural activities, machinery, equipment, and other subordinated facilities used in the commercial production of farm products.

**Farm Market** - A place or an area where transactions between a farmer operating as a farm market operator and customers take place offering for sale agricultural products. This also includes a roadside stand.

**Floor Area** - The total area of floor space within the outside walls of a building excluding porches, breezeways, garages, attic, basement, utility areas, cellar or crawl space.

**Garage - Private** - A detached accessory building or portion of a main building used only for the parking or storage of not more than three (3) passenger automobiles, of which one (1) may be a light delivery or pickup motor vehicle used by the occupants of the premises of rated capacity not to exceed one and one-half (1 ½) tons.

**Garage - Public** - A building other than a private garage primarily used for the purpose of parking, storing, repairing or equipping motor vehicles therein as commercial use.

## **Grade**

1. **Established Grade** - The average of the natural grade elevations surrounding the proposed structure.
2. **Natural Grade** - The grade as determined by the natural topography that existed before site alteration.

**Greenbelts** - A planting or buffer strip at least ten (10) feet in width on which exists or is planted dense forming evergreens which are maintained sufficient to obscure the view of any activity carried on therein from adjoining property.

If the natural growth along the perimeter of a property meets the above requirement, no added planting shall be required as long as such natural growth continues to obscure such view. When inadequate or no natural greenbelt exists, a planting shall be made on the strip of a minimum of two rows of dense forming evergreen trees such as cedar or spruce at least five (5) feet tall when planted. The trees shall be nursery type stock and shall be spaced a maximum of eight (8) feet apart, and the rows offset so that when looking straight on the maximum width between will be four (4) feet. Such plantings shall be maintained in a healthy, growing condition by the property owner, so that it meets all the requirements as a greenbelt. Any such tree which may die shall be replaced with one of the same variety the size of those on either side.

Additional plantings of deciduous trees and shrubs to enhance the basic planting may be required by the Planning Commission under site plan approval consideration.

**Group Retreat Center** - A single family dwelling including accessory buildings and structures used for professional or educational, meetings, conferences, or seminars and which may provide meals, housing, and recreation for participants during the period of the retreat or program only. All meals, lodging and recreational facilities are provided as a package to guests. Such centers may not be utilized by the general public for meals or overnight accommodations.

**Home Occupation** - An occupation clearly incidental to a residential use by a resident entirely within his dwelling, and not in an accessory building or structure and with the assistance of not more than one (1) non resident employee. Such use shall not occupy more than twenty-five (25) percent of the floor area of the dwelling.

**Housekeeping Cabin Park** - A parcel of land on which, two (2) or more buildings are maintained, offered, or used for dwelling or sleeping quarters for transients and operated as a commercial use, but excluding boarding or lodging houses, motels, and tourist homes.

**House Trailers or Mobile Homes** - Any vehicle or similar portable structure, self-propelled or designed for towing, having no foundation other than wheels or jacks and so designed or controlled as to permit occupancy for dwelling purposes.

**Land Division** - Creation of a lot or lots of a different configuration from the original boundaries.

**Lot** - A parcel of land of sufficient size and configuration to meet minimum zoning requirements for use coverage and area and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on a dedicated roadway or on a permitted private road as may be provided by appropriate ordinance. Such lot may consist of:

1. Single lot of record,
2. A portion of a lot of record,
3. A combination of complete lots, lots of record or portions thereof, or,
4. A parcel of land described by metes and bounds provided that in no case shall a division or combination of any residential lot or parcel be created which does not meet the requirement of this Ordinance.
5. A portion of a site condominium development consisting of the property upon which a principal and accessory structures may be constructed along with any limited common areas necessary to insure an area containing the dimensions necessary to comply with the requirements of the district in which the property is located.

**Lot of Record** - A lot which is part of a subdivision recorded in the Office of the County Register of Deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded, and which is not in single ownership with adjacent properties or is considered as such for tax purposes.

**Master Deed** - The legal document prepared and recorded pursuant to the Condominium Act, within which are, or to which are attached as exhibits and incorporated by reference, the approved by-laws for the project and the approved condominium subdivision plan for the project.

**Mini-Storage** - A parcel of property containing a building or series of buildings each divided into two or more independently accessed storage spaces for use in the long term storage of an individual or family's personal and household property (as opposed to the storage of commercial or industrial material which would be considered warehousing for the purpose of this ordinance) with no commercial activities permitted on the property other than the renting out of individual storage units.

**Nonconforming Structure** - A structure lawfully existing at the time of adoption of the Zoning Ordinance, or any amendments thereto, that does not conform to the requirements of the zone district in which it is located.

**Nonconforming Lot** - Any lot of record, outlot, or parcel of land lawfully existing at the effective date of this Ordinance, or amendments thereto, which does not meet the land area or dimensional requirements of the zone district in which it is located.

**Nonconforming Use** - A use lawfully existing within a structure or on land at the time of adoption of this Ordinance, or any amendments thereto, and which does not conform to the regulations of the zone district in which it is located.

### **Ordinary High Water Mark**

1. **For Inland Lakes** - The line between upland and bottomland which persists through successive changes in water levels below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland, and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation. On an inland lake which has a level established by law it means the high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark.
2. **For East Arm of the Grand Traverse Bay** - The average Ordinary High Watermark for the East Arm of the Grand Traverse Bay shall be the Ordinary High Watermark (OHW) elevation, I.G.L.D. 1985 (International Great Lakes Datum)

**Owner(s)** - Shall mean any combination of persons who have equitable or legal title to the premises, dwelling, or dwelling unit.

**Planning Commission** – For the purposes of this Ordinance the term Planning Commission is the Elk Rapids Township Planning Commission as authorized by PA 33 of 2008, as amended.

**Principal Use** - The primary and predominant use or intended use of the premises according to the zone requirements, including permitted accessory uses.

**Private Road** - Any road or thoroughfare for vehicular traffic which is privately owned and maintained and which provides the principal means of access to abutting properties.

**Residential Scale Solar Facilities** - Any mechanism or device designed for the purpose of converting solar energy into electrical power.

**Seasonal** - Any use of such a nature that the activity cannot or should not be performed during each calendar month.

**Sign** - An outdoor sign, display, figure, painting, drawing, message, placard, poster, billboard or other thing which is designated, intended or used to advertise or inform.

**Single Ownership** - A lot of record, on or before the effective date of the Zoning Ordinance, in separate and distinct ownership from adjacent lot or lots where such adjacent lot or lots were not at that date owned by the same owner or the same owner in joint tenancy in common or entires with any other person or persons; or where such adjacent lot or lots were not owned by the same owner or any person or persons with whom he may be engaged in a partnership or joint venture; or where such adjacent lots were not owned by any corporation in which the owner owned fifty-one (51) percent or more of the stock issued and outstanding.

**Site Condominium Unit** - Individual Principal Building with associated accessory structures not physically attached to other principal or accessory structures

**Solar Energy Farms** - A utility-scale commercial facility that converts sunlight into electricity, whether by photovoltaic, concentrating solar thermal devices or any other various experimental solar technologies for the primary purpose of wholesale or retail sales of generated electricity off-site. Solar Energy Farms do not include small scale solar panels or technologies installed at individual residential or commercial locations (e.g. roof or ground mounted solar panels) that are used exclusively for private purposes and not utilized for any commercial resale of any energy, except for the sale of surplus electrical energy back to the electric grid.

**Special Exception (Special Use)** – A use that meets the intent and purpose of the zoning district, but which requires the review and approval of the Planning Commission in order to ensure that any adverse impacts on adjacent properties or public services and facilities that



may be generated by the use can be, and are, mitigated; as prescribed in Section 19.07.

**Structure** - A structure is any production or piece of material artificially built up or composed of parts joined together in some definite manner, and any construction, including dwellings, garages, building, mobile homes, decks, signs and sign boards, tower, poles, antennas, stand pipes or other like objects, but not including fences.

**Structural Change or Alteration** - Any change in the supporting members of a building, such as bearing walls, columns, beams or girders, or any substantial change in the roof.

**Structure Height** – The vertical distance measured from the established grade, as determined in Section 2.02, to the highest point of the roof surface.

**Tasting Room** - A facility where the following activities take place; (1) tasting of fresh and/or processed agricultural produce such as wine, fruit wines, and non-alcoholic fruit juices; (2) retail sales of winery products by the bottle for off-premises consumption; and (3) sales of wine by the glass for on premises consumption.

**Variance** - A deviation from the terms of this Ordinance granted by the Board as Authorized by the enabling statute, upon findings of practical difficulties and unnecessary hardship, as prescribed in Section 18.06.

**Warehousing** - Uses which feature any of the following, indoor or outdoor storage, wholesale sales, or the distribution of bulk materials, supplies, manufactured products or uses which are characterized by frequent heavy truck traffic, but which does not include production or manufacturing on the property.

**Wind Powered Generators** - Any mechanism or device designed for the purpose of converting wind energy into electrical or mechanical power.

**Winery** - A state-licensed facility where agricultural fruit production is maintained, juice is processed into wine, stored in bulk, packaged, and sold at retail or wholesale to the public with or without the use of a wine tasting facility. The site and buildings are used principally for the production of wine. A winery may also include a tasting room.

**Yards** - Minimum yard dimensions are measured from the lot line or road right of way when the lot line is contained within the right of way. In the case of a site condominium development, the borders of adjoining building sites shall contain a minimum of twice the distance of the yard requirement for the district in which the property is located.

1. **Front Yard** - The minimum distance between the front line of any building and/or structure or any projection thereof and the front lot line, unoccupied and extending for the full width of the lot. In the case of any building and/or structure which front on a lake, the front yard shall be that area which lies between the front line of any building and/or structure or any projection thereof and the high water mark, unoccupied and extending for the full width of the lot. In the case of any building and/or structure or

any projection thereof which fronts on a lake the front yard and rear yard shall each have a minimum setback from the lake and the road side of fifty (50) feet.

2. **Rear Yard** - The minimum distance between the rear lot line and the rear line of any building and/or structure or any projection thereof, unoccupied and extending the full width of the lot.
3. **Side Yard** - The minimum distance between the side lot line and the side line of any building and/or structure or any projection thereof unoccupied and extending for the full length of the lot.

## **CHAPTER 2**

### **GENERAL PROVISIONS**

#### **Section 2.01 - ALTERATION ON DWELLINGS**

Except and as hereinafter specified, no building structure, premises, or piece and parcel of land in and throughout the Township shall hereafter be used or occupied, and no building or part thereof or other structure shall be erected, raised, moved, placed, reconstructed, extended, enlarged, or altered, except in conformity with the regulations and provisions herein specified for the zone in which it is located.

#### **Section 2.02 - GRADE LEVELS**

- A. All dwelling houses in any zone and all business places shall, subsequent to adoption of this Ordinance, conform to all established and determined grade levels.
- B. The established grade shall be determined by averaging the natural grade elevations surrounding the proposed structure. The natural grade is the natural topography that existed before any site alteration.
- C. It shall be unlawful to erect or construct a building in any zone with the top of the foundation or basement walls together with the plates thereof, more than twenty-four (24) inches above the established or determined grade level.

#### **Section 2.03 - BASEMENT DWELLINGS PROHIBITED**

Basement dwellings are prohibited in the Township except as provided in Section 2.05.

#### **Section 2.04 - MOBILE HOMES AND HOUSE TRAILERS**

- A. A mobile home may be used in any zone in which a single family dwelling is permitted without application for special approval if the mobile home complies with the definition of "Dwelling, Single Family" as defined in this ordinance.
- B. Under skirting shall be provided from the floor level to the ground level around the entire perimeter of the mobile home.
- C. All mobile homes shall be secured to a minimum of four (4) tie downs; two (2) tie downs per side or according to HUD requirements, whichever are more strict.
- D. A mobile home or house trailer which does not meet the definition of "Dwelling, Single Family" shall not be permitted in any zone within the Township except in a seasonal trailer park or mobile home park located in the "P-D" Zone and approved by the Planning Commission.

The minimum floor area in such a dwelling shall not be less than six hundred (600) square feet with a minimum width of twelve (12) feet.

### Section 2.05 - TEMPORARY DWELLINGS

No cabin, garage, basement, tent, motor home or travel trailer or other temporary structure shall be used in whole or in part for dwelling purposes in any zone provided that such structure may be used for a temporary dwelling for a period not to exceed six (6) months upon application to and approval of a permit for such occupancy by the Zoning Administrator upon determination that the following conditions exist and are met:

- A. The permanent dwelling of the resident applicant has become uninhabitable due to damage caused by fire, wind or other natural calamity or emergency.
- B. Due to undue hardship, the applicant is unable to obtain another dwelling unit as a temporary residence.
- C. Adequate provision is made for temporary public or private water supply and sewage disposal to and from said structure.
- D. The structure is constructed so as to meet the minimum requirements for the health, safety and welfare of those occupants and the surrounding neighborhood.

### Section 2.06 - ACCESSORY STRUCTURES

A. Purpose - The purpose of this section is to provide standards for land that is primarily residential with regard to attached and detached accessory structures, including, but not limited to, attached and detached garages, pole buildings, sheds and other structures as defined in Section 1.03–Structures. Accessory structures are intended to be subordinate to the principal structure.

B. Definitions - Refer to Section 1.03-Accessory Structures.

C. Detached Accessory Structures

- 1. May only be built on a lot upon which there is a principal structure.
- 2. Are prohibited in the front yard, as defined in Section 1.03-Yards-Front Yard, or in either of the front yards on a corner lot, unless the following conditions apply:

On a waterfront lot, one (1) detached accessory structure may be located on that Portion of the lot between the water and the principal dwelling provided the following criteria are met:

- a. It shall not exceed one hundred (100) square feet in area and ten (10) feet in height to the peak.
- b. Shall meet all setback requirements of the zone district in which it is to be located.

- c. The area of such accessory structure shall be counted as part of the overall lot coverage on the lot.
- 3. Shall not be used for dwelling purposes. If plumbing facilities will serve the structure, the structure shall be limited to no more than two (2) internal plumbing fixtures located on the ground or first floor of the accessory structure.
- 4. Shall maintain a minimum of ten (10) feet of separation from each other and from the principal structure.
- 5. Shall comply with all yard, setback and lot coverage requirements applicable to the permitted principal structure, except for accessory structures on lots less than or equal to one (1) acre (43,560 sq ft), the following shall apply:
  - a. The accessory structure shall not exceed eighteen (18) feet in height to the peak.
  - b. Within any zone district that permits a residential use, a maximum of two (2) detached accessory structures are permitted, one of which shall not exceed one hundred (100) square feet in area and ten (10) feet in height to the peak.
  - c. When a lot is less than or equal to one (1) acre (43,560 sq ft), the total ground level gross square footage of all detached accessory structures shall not exceed the gross square footage of the first floor of the principal structure, exclusive of all attached accessory structures.
- 6. Lots under common ownership that are adjacent to one another or separated only by a public road (e.g. lots are directly across from one another) may be legally combined to form one lot. Once combined, an accessory structure may be erected across the street from the principal building lot provided all yard requirements for a principal structure are maintained.
- 7. If the detached accessory structure has an attic or second story, it shall be used for storage purposes and access to the attic or second story shall be by interior access only; exterior access or stairs shall not be permitted.
- 8. A site sketch shall be submitted along with a zoning permit application and approved by the Zoning Administrator prior to erection of a detached accessory structure. Such site sketch shall be drawn to scale and shall illustrate information necessary to determine compliance with applicable Ordinance requirements, including but not limited to dimensions and height

of the structure, setbacks from lot lines and other structures on the property, location of the structure, and elevation renderings.

D. Attached Accessory Structures

1. Shall comply in all respects with requirements of this Ordinance applicable to the permitted principal structure.
2. An attached accessory structure may include second floor living space provided that such living space is a contiguous extension of living space within the primary structure. Access to the second story shall be by interior access only; exterior access or stairs shall not be permitted.
3. Attached accessory structures shall comply with all yard, setback, height and lot coverage requirements applicable to the permitted principal structure, except accessory structures on lots less than or equal to one (1) acre (43,560 sq ft), the following shall apply:

An attached accessory structure, including a garage, shall not exceed sixty (60%) percent of the ground floor area of the attached single family dwelling. Notwithstanding the above, an existing single family dwelling less than 960 square feet is permitted an attached garage up to five hundred and seventy six (576) square feet, or 24'x24', in area regardless of the ground floor area, subject to standards within the applicable zone district.

Section 2.07 - STORAGE OF VEHICLES AND EQUIPMENT

No area within any zone shall be used for the open space storage, dismantling, accumulation, or abandonment of dismantled, disabled, wrecked or discarded motor vehicles or machinery, fixtures, appliances, junk or any part thereof.

Section 2.08 - ESSENTIAL SERVICES

Essential services shall be permitted as authorized or regulated by law and the Ordinances of this Township in any zone, it being the intention hereof to exempt such erection, construction, alteration and maintenance from the application of this Ordinance.

Section 2.09 - HIGHWAY INTERSECTION SETBACKS

- A. At the intersection of any State Trunkline Highway and any County Primary Road and for a distance of one hundred (100) feet as measured along each right-of-way line from the point of intersection of the right-of-way lines, and then diagonally, no building or structure shall be erected or located within one hundred (100) feet of said right-of-way except approved directional or other official sign or open fences allowing totally unobstructed vision.
- B. At the intersection of any County Local Road with any State Trunkline Highway or County Primary or Local Road and for a distance of fifty (50) feet as measured along each right-of-way line from the point of intersection of the right of-way lines, and then

diagonally, no building or structure shall be erected within fifty (50) feet of the right-of-way line of the County or Local Road except approved directional or other official sign or open fences allowing totally unobstructed vision.

#### Section 2.10 - ANIMALS IN ZONED AREAS

It shall be unlawful to keep animals such as horses, cattle, pigs, goats or poultry on any premises in an "R" - Residential, "E" - Environmental, "C" - Commercial, or "M" - Manufacturing zone provided that the keeping of such animals shall be permitted in an "R-1", "R-2" and "E" zone and residential lots in the "A" - Agricultural zone where the size of the lot upon which the same shall be kept shall be not less than five (5) acres in area with a minimum width of two hundred (200) feet and where a total enclosure of fencing is provided. This restriction shall not prohibit the keeping of ordinary household pets in any zone.

#### Section 2.11 - RESTRICTIONS APPLICABLE TO PROPERTY ABUTTING LAKES, RIVERS OR STREAMS

Many lands within the Township are connected to, adjoin or abut lakes, East Arm of the Grand Traverse Bay, rivers, streams and wetlands. In the interest of protecting the water quality, controlling erosion, and preserving the natural setting of the shoreline, the following provisions are applicable:

- A. A strip of natural vegetation shall be maintained paralleling the shoreline or streambed and traversing the property in question for a depth of twenty-five (25) feet beginning at the edge of surface loam soil or a contiguous root system, whichever occurs nearest to the shoreline. For undeveloped lots only no more than thirty (30) percent of all living trees and shrubs may be removed by cutting them to grade level. Trees and shrubberies may be trimmed and pruned for a view of the water from the property. No land alterations including the removal of tree stumps and natural ice dams shall be allowed within this native protection strip.

If the applicant desires to remove up to thirty (30) percent of all living trees and shrubs as noted above the applicant shall submit a site plan in accordance with Chapter 17 and specifically document all trees and shrubs 25 feet landward of the shoreline or streambed. A count of trees and shrubs shall be documented including the type and size. In some situations, the site plan may have to be prepared by a Natural Shoreline Professional certified by the Michigan Natural Shoreline Partnership or a qualified professional and shall detail the proposed modifications to the property to enable the Planning Commission to determine the extent and potential impacts of proposed changes. In addition to the review process outlined in Chapter 17, prior to Planning Commission action on the request, the applicant shall submit the site plan to the Antrim County Soil Erosion Control Officer for review.

The tree/shrub removal design shall make every effort possible to maintain a forested/wooded shoreline character.

The Planning Commission may require a performance guarantee as outlined in Section 17.08 to insure only designated trees and shrubs have been removed as indicated on the site plan approved by the Planning Commission. An inspection coordinated with the Township Zoning Administrator and the Antrim County Soil Erosion Control Officer shall take place after the thirty (30) percent site modification has been completed to determine whether stipulations have been met and whether Township permits can be issued. If the condition of the site is in compliance with approved plans, any such performance guarantee shall be returned to the applicant.

- B. If living trees and shrubs are proposed for removal in excess of those permitted in Section 2.11-A, or if land alterations will occur within the native protection strip specified above, the following requirements must first be met:
1. The applicant shall submit a site plan in accordance with Chapter 17. The submission requirements for the site plan shall include items 17.04-A 1-14, and 17.04-B 1-7 and 22. In some situations the site plan may have to be prepared by a Natural Shoreline Professional certified by the Michigan Natural Shoreline Partnership or a qualified professional and shall detail the proposed modifications to the property to enable the Planning Commission to determine the extent and potential impacts of proposed changes. In addition to the review process outlined in Chapter 17, prior to Planning Commission action on the request, the applicant shall submit the site plan to the Antrim County Soil Erosion Control Officer for review.
  2. The shoreline erosion design shall make every effort possible to maintain a forested/wooded shoreline character by maintaining existing trees and shrubs in the design and construction of the new shoreline protection system.
  3. The Planning Commission may require a performance guarantee as outlined in Section 17.08 to insure completion of any restoration, native landscaping or other features of the proposed modifications. An inspection coordinated with the Township Zoning Administrator, conducted by the Antrim County Soil Erosion Control Officer shall take place after the modifications have been completed to determine whether stipulations have been met and whether Township permits can be issued. A second inspection coordinated with the Township Zoning Administrator, shall be conducted by the Antrim County Soil Erosion Control Officer one year after Township permits have been issued to determine whether any required performance guarantee can be relinquished to the applicant. If the condition of the site is in compliance with approved plans, any such performance guarantee shall be returned to the applicant.
  4. The Planning Commission shall consider the recommendation of the Soil Erosion Control Officer, the extent of proposed vegetation removal or land



alteration, proposed restoration, existing and proposed topography, and the location of any nearby structures. The application shall be approved where it is shown that the proposed modifications will not be injurious to shoreline on adjacent properties, and where the plan demonstrates an intent to improve a situation that is dangerous to the general public or harmful to water quality because of unchecked or potential shoreline erosion, sediment runoff or water pollution.

- C. In special situations, the Zoning Administrator may issue a Zoning Permit to grant the removal of a tree or trees in the 25-foot protection zone for safety and health reasons. If the Zoning Administrator finds there is good cause for a tree or trees to be removed from a property for the reasons outlined below, the property owner will be required to plant a replacement tree for every tree removed with a minimum caliper size of two (2) inches for a deciduous tree and six (6) feet in height for a conifer tree. In the event the Zoning Administrator questions the removal of a tree or trees, the request may be referred to the Planning Commission for consideration.
1. The tree or trees proposed for removal have been damaged by a storm or wind, or diseased or dead and presents a safety hazard to the property or adjacent property. The root base of the tree or trees shall not be removed for soil erosion purposes. For these specific situations, no tree replacement is required.
  2. The tree or trees proposed for removal are a nuisance to the property owner due to tree sap, an invasive species, or other environmental concern that cause a reduction in enjoyment of the waterfront property. The root base of the tree shall not be removed for soil erosion purposes.

#### Section 2.12 - HOME OCCUPATIONS

Unless otherwise specified herein, home occupations will be permitted in the R Zone only upon approval as a special exception as provided in Section 19.07.

#### Section 2.13 - PRIVATE WATERFRONT ACCESS

All private unoccupied waterfront accesses will conform as a minimum to the width and square footage requirements for a platted lot within the R-I zone. A private access of the required minimum size can support a maximum use density of five (5) non-waterfront property dwelling units. An additional twenty (20) feet of width and four thousand (4,000) square feet of land will be provided for each additional dwelling unit over five (5) dwelling units.

#### Section 2.14 - SCENIC VISTAS

No materials, accessory structures, or vegetation shall be placed in such a manner so as to unreasonably deprive other property owners of their pre-existing scenic view or vista.

#### Section 2.15 - GENERAL LOT AND YARD REQUIREMENTS FOR ALL ZONE DISTRICTS

Non-Duplication - In determining lot and yard requirements, no area shall be counted as yard to more than one structure or use, and no area necessary for compliance with the open-space requirements for one structure or use shall be counted in the calculation or requirements for any other structure or use.

#### Section 2.16 - WATER SUPPLY AND SEWAGE DISPOSAL FACILITIES

Every building hereafter erected, altered or moved upon any premises and used in whole or in part for dwelling, recreational, business, commercial or manufacturing purposes, including churches, schools and other buildings in which persons customarily congregate, shall be provided with a safe and sanitary water supply system, and with means for collecting and disposal of all human excreta and of all water-carried domestic, commercial, industrial, and other wastes that may adversely affect health conditions. The written approval of such facilities by the District Health Department Number Three shall be filed with the application for a Zoning Permit as hereinafter provided. Temporary sanitation facilities used for more than two (2) days may be permitted by signed approval by the Zoning Administrator and must be properly screened from public view.

#### Section 2.17 - GRADING

No premises shall be filled or graded so as to increase the amount or velocity of surface water run off onto adjoining parcels.

#### Section 2.18 - LOT CREATION, LAND DIVISION & CONDOMINIUM DEVELOPMENT

- A. Approval Required - For the purposes of this Ordinance, the Township of Elk Rapids shall not recognize any lot which was not a lot of record as of the effective date of this Ordinance, or any amendment thereto, is not of sufficient size and configuration to meet all zoning requirements, or which has not been subsequently approved by the Elk Rapids Township Board as established under this Section. Subdivisions, site condominiums, or plats may be made only in accordance with the Michigan Subdivision Control\Land Division Act or the Michigan Condominium Act as amended and in accordance with the conditions of the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance and the Elk Rapids Township Zoning Ordinance
- B. Application for Lot Creation, Land Division & Condominium Development - Application for a lot creation, land division & condominium development shall be made to the Elk Rapids Township Clerk. If generally complete, the application shall be processed in accordance with this Ordinance and the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance. The application shall be signed by all parties of interest in the property.
- C. Required Application Information -The following required information shall be included on all applications for lot creation, land division & condominium development:

1. Property survey signed and sealed by a land surveyor registered in the State of Michigan, including the following:
  - a. North arrow, date, and scale.
  - b. Existing and proposed lot lines and dimensions.
  - c. Existing utilities and official County drainage courses within fifty (50) feet of the lot(s) to be created.
  - d. Location and dimensions of existing and proposed easements, lot numbers, roadways and lot irons.
  - e. Existing structures on the proposed lot(s) and all structures within 50 feet of the proposed lot lines.
  - f. Zoning classification of the lot(s) to be created and all abutting lots.
  - g. All required front, rear and side yard setbacks resulting from the requested lot creation.
  - h. All required open space.
  - i. Location of natural or artificial drainage courses, lakes, streams, wetlands, and dunes, high risk erosion zones, threatened or endangered species, unusual topography, and major stands of trees.
  - j. At the discretion of the Elk Rapids Township Board, the owner shall provide a preliminary plan for the feasible plan development, division and access to any remaining or abutting lands affected by the proposed lot creations. The Elk Rapids Township Board may also at their discretion, require the preliminary plan to be reviewed by the Elk Rapids Township Planning Commission.
2. A written instrument fully executed in a form legally sufficient for recording with the Antrim County Register of Deeds, including a legal description of the requested parcels. Areas shall be shown to the square foot on parcels of less than one acre and acres to the one-hundredth of an acre on parcels larger than one (1) acre.
3. All existing and proposed deed restrictions for the property(s), including any required easements for drainage, roads or utilities attached in recordable form.
4. Name, address and phone number of the property owner(s) and all others holding interest in the property. Satisfactory evidence of ownership or interest shall be presented to the Township.

5. If the division or partition of the parcel will result in a lot size less than the requirements of the Land Division Act, Michigan Public Act 288 of 1967, as amended, and/or the applicable provisions of the Zoning Ordinance or its successor ordinance, if any, then the applicant shall submit in addition a fully executed affidavit in form legally sufficient for recording with the Antrim County Register of Deeds and signed by all persons who have any legal or equitable interest in the parcel, acknowledging that they understand the partitioned or divided parcel or parcels may not thereafter be developed or used separately, but only in conjunction with the adjoining parcel or parcels of land.

D. Criteria for Approval or Denial of Lot Creation - The following criteria shall be used as a basis upon which lot creation will be reviewed by the office of the Supervisor, Clerk, Treasurer, Board and Assessor:

1. No lot creation shall be approved if the proposed resultant parcels contain less area than required by the minimum standards of this Zoning Ordinance, except where resultant abutting parcels under the same ownership are combined to meet, or exceed the minimum size.
2. The ratio of lot depth to width shall not exceed four (4) to one (1).
3. All lots shall be provided with a satisfactory means of access to a public road or a private road complying with the provisions of this Ordinance and the provisions of the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance. Property lines shall be laid out to promote efficient development with shared access to roads available for future development.
4. The size, shape, orientation, and existing zoning of the lots shall be appropriate for the type of development and land use contemplated. No lot creation shall be approved which would conflict with existing drainage ditches, natural watercourses, easements or public right-of-way.
5. No lot creations shall be granted which are contrary to, or in violation of, the Land Division Act, Michigan Public Act 288 of 1967, as amended.
6. No lot creation shall be approved if the division would reduce any required open space, yard space or off-street parking space below the minimums required by this Ordinance or if the division would effectively allow the avoidance of the requirements of this Ordinance and those of the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance.
7. No lot creations shall be approved which would preclude the feasible and efficient development, division or access for remaining or abutting lands affected by the proposed lot creation. No lot shall be created solely of sand

dunes area, wetland area, drainage ways, lake or river bottom, lands within the 100 year flood plain or stream bed based on the Ordinary High Water (OHW) elevation, I.G.L.D. 1985 (International Great Lakes Datum).

#### Section 2.19 - PRIVATE ROAD REGULATION

Private Road - Any road or thoroughfare for vehicular traffic which is privately owned and maintained and which provides the principal means of access to abutting properties.

A. When private road development occurs in the Township of Elk Rapids and is not subject to the standards established under the Land Division Act, Michigan Public Act 288 of 1967, as amended, and the requirements of the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance, the following minimum private road standards shall apply. No person, firm, or corporation shall hereafter divide any land as hereinafter described without providing for public or permanent private easements for access to such divided lands with said private easements to conform to these minimum requirements:

1. All lots must be on a public or private road frontage and meet all Ordinance requirements.
2. All private roads constructed in Elk Rapids Township shall be accessible, usable, and constructed to the Antrim County Road Commission Standards parallel to and centered with the centerline of a permanent right-of-way easement duly recorded with the Antrim County Register of Deeds. Rights-of-way or easements, while not required to be dedicated, will be reserved for future dedication and preclude any development within this designated area. All plans as submitted for approval must show the private road easement including a legal description, the grades for the roads, and any drainage facilities and structures.
3. All private roads shall have names approved by the Elk Rapids Township Board, be consistent with the County address numbering system and the County Road Commission requirements.
4. There shall be a clear vision zone at corners of intersecting roads, or road junctions, consisting of a triangular area defined by the point of intersection of the right-of-way lines and the two points extended along such lines a distance of twenty-five (25) feet from the point of intersection, and within which area no obstruction to vision, excluding existing topography, shall be permitted from a height of two (2) feet to eight (8) feet above centerline elevation of abutting streets, except that not more than two (2) trees with trunks of not more than thirty (30) inches in diameter each, and clear of any branches for such heights may be located within such area; provided, however, that this section shall not prohibit the requirement of a greater clear vision area where such is necessary in view of permitted traffic, anticipated traffic volumes, or geographic conditions.

5. All private road easements shall meet the following requirements:
  - a. Unless otherwise specified in this Ordinance and the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance, easements shall be a minimum of sixty six (66) feet wide. The Township of Elk Rapids Planning Commission or its designated agent may require additional width to the right-of-way easement to insure for adequate construction in specific situations.
  - b. The right-of-way easement width on curved portions of roads shall be the same as for tangent portions.
  - c. The minimum distance between private road outlets on a single side of a public road shall be six hundred (600) feet.
  - d. Shall be posted with speed limits of fifteen (15) mph or less.
6. A drainage plan shall be submitted on a topographic map, indicating the manner in which surface drainage is to be dispersed. In no case shall runoff from a private road be diverted beyond the limits of that private road onto adjacent roads or property unless appropriate easements are provided.
7. All roads constructed in Elk Rapids Township shall be constructed so as to sufficiently control storm water runoff and permit effective storm water drainage and prevent soil erosion and shall have all required storm water and soil erosion control permits. No runoff shall be discharged to lakes, streams, or wetlands without adequate best management practices. Private roads shall be laid out to the greatest extent feasible to achieve the following objectives: (Listed below in order of priority, as it is recognized that some may not exist or may conflict with others on any given site)
  - a. Not on soil classified as “hydric” (wetland soils) by the USDA Soil Conservation Service or through wetland area as delineated pursuant to the Unified Federal Method of Wetland Delineation.
  - b. Not in areas of steep slopes (fifteen percent (15%) or greater), within two hundred (200) feet of a shoreline or over streams if they can be avoided.
  - c. Along fence rows or the edges of open field or other open spaces adjacent to any woodlands.
  - d. Within marginal areas of woodland (note: marginal areas shall extend a maximum of two hundred (200) feet into the interior of said woodlands).

- e. On areas not considered prime or unique farmlands or in areas not considered as prime forestland soils on a national or regional basis.
  - f. In locations least likely to impact scenic vistas, as seen from public roadways or water.
8. A private road serving or to serve a maximum of two (2) lots, parcels or condominium units shall at a minimum meet the following design standards:
- a. Shall be located on a right-of-way easement a minimum of thirty (30) feet wide.
  - b. Have sand and gravel base of not less than twelve (12) inches in depth of which the top six (6) inches in depth shall be at minimum road grade gravel.
  - c. Have a roadbed not less than twelve (12) feet wide.
  - d. Use adequate best management practices when crossing streams, drainage courses, and wetlands.
  - e. No portion of the road grades shall exceed seven (7%) percent.
  - f. Shall have a maximum length of two thousand (2,000) feet.
9. A private road serving or to serve a minimum of three (3) and a maximum of six (6) lots, parcels, or condominium units shall at a minimum meet all of the design standards presented in Item 8 of this section with the exception of that the minimum road bed width shall be sixteen (16) feet rather than twelve (12) feet.
10. A private road serving or to serve a minimum of seven (7) and a maximum to twelve (12) lots, parcels, or condominium units shall at a minimum meet all of the design standards presented in Item 8 of this section with the exception of the following:
- a. Shall be located on a right-of-way easement a minimum of sixty six (66) feet wide.
  - b. Have a roadbed not less than nineteen (19) feet wide.
  - c. Paving shall be required in those areas that have grades greater than three (3) percent. Pavement in said areas shall be a minimum of eighteen (18) feet in width and other than pavement width meet or exceeding County Road Commission standards and specifications

for materials, thickness, and roadbed construction. (Note: grade shall be determined by determining the differences in elevations at stations located at one hundred (100) feet intervals along the centerline of the final road grade).

11. A private road serving or to serve more than twelve (12) lots, parcels or condominium units shall meet design specifications and road construction standards as presented in Item 10 of this section with exception of the following:
  - a. Have a roadbed not less than twenty-four (24) feet wide unless it connects two public roads in which case all County Road Commission standards shall be met.
  - b. If more than twenty-five (25) lots have access to a private road then a second means of access meeting the requirements of this Ordinance (either a public road or an approved private road) shall be provided.
12. Construction permits from the Antrim County Road Commission are required for connection to County roads. Permits are required from the Antrim County Drain Commissioner under the Soil Erosion and Sedimentation Control Act, P.A. 347 of 1974, MCLA282.101 et seq., when applicable. No zoning permit shall be issued on any private road until such private road reviewed by the Elk Rapids Township Planning Commission and then approved by the Elk Rapids Township Board.
13. Application for road construction shall be made at the same time as a land division occurs creating a lot(s) without frontage on an existing public road. Applicant shall prepare a general property development plan complying with the requirements of this Ordinance, and the Elk Rapids Township Subdivision Control Ordinance or the Land Division Ordinance, as amended. Prior to review by the Elk Rapids Township Planning Commission and then approval by the Elk Rapids Township Board, the applicant will prepare and provide three (3) sets of:
  - a. Engineered road construction plans.
  - b. Drainage plan.
  - c. Road maintenance agreement and deed restrictions satisfactory to the Elk Rapids Township Attorney, signed by applicant/owner, providing for:
    - 1) A method of initiating and financing of such road and/or easements in order to keep the road in a reasonably good and usable condition.



- 2) A workable method of apportioning the costs of maintenance and improvements to current and future users.
  - 3) A notice that if repairs and maintenance are not made within six months of the date of official notice from the Elk Rapids Township Board of Elk Rapids Township may bring the road up to the design standards of this Ordinance and assess owners of parcels on the private road for the cost of all improvement, plus an administrative fee in the amount of twenty-five (25) percent of the total costs.
  - 4) A notice that no public funds of Elk Rapids Township are to be used to initially build, thereafter repair, or maintain the private road.
  - 5) Easements to the public for purposes of emergency and other public vehicles for whatever public services are necessary.
  - 6) A provision that the owners of any and all of the property using the road shall refrain from prohibiting, restricting, limiting or in any manner interfering with normal ingress and egress and use by any of the other owners. Normal ingress and egress and use shall include use by family, guest, invitee, vendors, trades persons, delivery person, and others bound to or returning from any of the properties having a need to use the road.
14. No private road shall be incorporated into the public road system unless built to the specifications of the Antrim County Road Commission for a public road.
- B. The Elk Rapids Township Planning Commission shall review the plans of the private road and forward recommendations to the Elk Rapids Township Board. A Professional Engineer, who reports to the Elk Rapids Township Zoning Administrator, shall be hired by the private road developer. The Engineer and the Elk Rapids Township Zoning Administrator shall consult with water resource experts and/or Michigan Department of Natural Resources officials for a written review of environmental impacts. After road plans are reviewed by the Elk Rapids Township Board, a conditional construction permit may be issued by the Zoning Administrator which are subjects to performance bonds as established by the Township Board. The Engineer and Township Zoning Administrator will inspect and review the road during construction. Upon completion of construction of the road, a site inspection of the road will be made by the Engineer and the Zoning Administrator who shall forward his/her recommendation to the Township Board who shall then grant a final approval.

- C. All private roads shall be designated as such and have a sign and name meeting county sign standards erected by the property owner. In addition to road identification, private road signs shall also include the wording "Private Road" in a minimum of four (4) inch letters and "Not maintained by the Antrim County Road Commission" in a minimum of two (2) inch high letters.
- D. An application fee is to be established by the Elk Rapids Township Board. Before final approval the cost of review of plans and inspection by the Township Zoning Administrator of the private road and drainage shall be paid for by the applicant/developer.
- E. All purchasers of property where a private road provides access to the premises shall, prior to closing of the sale, receive from the seller a notice of easement, in recordable form, substantially conforming to the following:

"This parcel of land has private road access across a permanent \_\_\_\_\_ (insert size of easement) foot easement which is a matter of record and a part of the deed. This notice is to make the purchaser aware that this parcel of land has egress and ingress over this easement only."
- F. Neither the County nor the Township of Elk Rapids has any responsibility for maintenance or up keep of any improvement across this easement. This is the responsibility of the owners of record. The United States mail service and the local school district are not required to traverse this private improvement and may provide service only to the closest public access. (Michigan P.A. 134 of 1972 as amended)
- G. Where a private road or access easement is present on a lot, minimum required yard setbacks shall be measured from the private road or access easement right-of-way, regardless of whether the right-of-way provides frontage for the lot.
- H. When new lots or parcels are added to an existing private road or when an existing private road is extended to add new lots or parcels, the entire private road must be upgraded to the standards as noted in Sub-Section 2.19-A (1-14). The person or persons adding the additional lots shall be responsible for upgrading the private road to the new standard.

## Section 2.20 – CONFLICT OF INTEREST

- A. Before casting a vote on a matter on which a Zoning Board of Appeals or Planning Commission member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the Zoning Board of Appeals or Planning Commission of which he or she is a member. Failure of a

member to disqualify him or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

B. Conflict of interest is defined as; failure to disclose conflict of interest for purpose of disqualification when a Zoning Board of Appeals or Planning Commission member has personal or monetary interest in the matter involved, or will be directly affected by a decision of the Zoning Board of Appeals or Planning Commission involved when:

1. An immediate family member is involved in any request for which the Zoning Board of Appeals or Planning Commission is asked to make a decision. "Immediate family member" is defined as, an individual's spouse, father, mother, son, daughter, brother, sister, or a relative of any degree, or any person residing in the same household as that individual.
2. A Zoning Board of Appeals or Planning Commission member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant's company, agency or association.
3. A Zoning Board of Appeals or Planning Commission member owns or has a financial interest in neighboring property. A neighboring property shall include any property falling within the notification radius for the application or proposed development, as required by the zoning ordinance.
4. There is a reasonable appearance of a conflict of interest, as determined by the Zoning Board of Appeals or Planning Commission member declaring such conflict.
5. A member of the Zoning Board of Appeals who is also a member of the Planning Commission or the Township Board, shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission or the Township Board. The member may consider and vote on other unrelated matters involving the same property.

#### C. Member Participation

1. A Zoning Board of Appeals or Planning Commission member declaring a conflict of interest should state the nature of the conflict and whether he or she believes he or she could impartially consider the request before the Zoning Board of Appeals or Planning Commission.
2. He or she should individually decide to abstain from any discussion or votes relative to the matter that is the subject of the conflict.
3. The member declaring a conflict may ask the other Zoning Board of Appeals or Planning Commission members to decide if he or she should abstain.

4. The member declaring a conflict may absent him/herself from the room in which the discussion takes place, unless doing so would violate his or her constitutionally protected rights to participate.
5. He or she should not make any presentations to the Zoning Board of Appeals or Planning Commission as a representative of the proposal.

#### Section 2.21 – OPEN SPACE DEVELOPMENT

- A. Purpose: The purpose of this Section is to provide an “open space preservation” development option for certain land in the Township.
- B. Qualifying Conditions: Land may be developed under the provisions of this Section only if each of the following conditions are satisfied:
  1. The land shall be zoned A or R3 Zone;
  2. The development of land under this Section shall not depend upon the extension of a public sanitary sewer or a public water supply system to the land, unless the development of the land without the exercise of the clustering option provided by this Section would also depend on such extension;
  3. At least fifty (50) percent of the land proposed for development shall remain in a perpetually undeveloped state (i.e., open space); and
  4. The open space preservation option shall not have previously been exercised with respect to the same land.
- C. Permitted Uses: Only uses permitted in the underlying Zone district shall be permitted within the open space preservation development.
- D. Application: The application and review procedures for land proposed to be developed pursuant to this Section shall be those stated in Chapter 17 of this Zoning Ordinance, except as otherwise provided in this Section. In addition to the application materials required by Chapter 17, an application for the development of land under the provisions of this Section shall include the following:
  1. Parallel Plan Application Requirements: A parallel plan shall be prepared for the purpose of demonstrating the number of dwelling units that could otherwise be developed on the land under its existing zoning if the open space preservation option were not exercised. The parallel plan may be conceptual in nature but shall include at least the following information:
    - a. Dates drawn and revised, north arrow and scale, which shall not be more than one inch equaling one-hundred feet (1" = 100'), and, in all cases, the scale shall be the same as that utilized for the site plan illustrating the proposed open space preservation development;
    - b. Location of street rights-of-way and all easements;

- c. Location of all lots, illustrating lot area and width to demonstrate compliance with the minimum requirements of the applicable Zone;
  - d. Required building setback lines on all lots to demonstrate the availability of sufficient buildable land to make the lot usable;
  - e. Location of all utilities that would be necessary to serve a development under the parallel plan and which would not be located within any street right-of-way or private road, or on buildable lots (the utilities include, but are not limited to, storm water retention or detention basins, community sewage treatment systems and community water supply facilities);
  - f. If development under the parallel plan would require the use of septic tanks and drain fields, the parallel plan shall illustrate the location of all septic tanks and drain fields. The applicant shall submit proof that the proposed septic tank and drain field location for each lot would be approved, or has been approved, by the Antrim County Health Department;
  - g. The topography of the land, at two (2) foot intervals, including identifying the location of all portions of the land that are unbuildable for residential purposes due to the presence of wetlands, slopes in excess of twenty-five (25) percent, flood plains, or other features prohibiting development for residential purposes; and
  - h. For parcels with water frontage proposed for open space preservation, the parallel plan shall also demonstrate compliance with Section 2.13 Private Waterfront Access.
2. Open Space Site Plan Application Requirements: A site plan shall be required in accordance with Chapter 17, in addition to the following information:
- a. The portion(s) of the land proposed to remain in a perpetually undeveloped state and the portions of the land to be used for clustered development;
  - b. Total number of acres of land proposed to remain in a perpetually undeveloped state, the total number of acres of land proposed to be used for clustered development, and the area contained within rights-of-way or easements;
  - c. Lots and proposed building envelopes, showing the lot area, width, and setbacks for each lot (the number of lots on the site plan shall not exceed the number of lots that could otherwise be developed as shown on the parallel plan, as approved by the Planning Commission);
  - d. Location of all septic tanks and drain fields (the applicant shall submit proof that the proposed septic tank and drain field location for each

lot has been approved by the Northwest Community Health Department); and

- e. The site plan must demonstrate compliance with the provisions of Section 2.13 if the parcel has private waterfront access.
- 3. A copy of the conservation easement, plat dedication, restrictive covenants, or other legal instrument that would run with the land, used to perpetually preserve the open space in an undeveloped state, shall be required. The legal instrument shall be reviewed by the Township Attorney, and shall be subject to the approval of the Township Board, consistent with the terms of this Section, prior to recording the legal instrument with the Antrim County Register of Deeds. The legal instrument shall indicate permitted uses of the open space; require that open space be perpetually preserved; and require maintenance by parties who have an ownership interest and provide standards for scheduled maintenance.
- E. Review Procedure: When reviewing an application submitted under the terms of this Section, the Planning Commission shall determine whether the parallel plan accurately reflects the number of dwelling units that could otherwise be developed on the land under its existing zoning. If the Planning Commission determines that the number of dwellings illustrated on the parallel plan exceeds the number of dwellings that could be permitted on the land if it were developed under its existing zoning, the applicant shall submit a revised site plan reflecting the permitted number of dwellings, as determined by the Planning Commission. If a site plan for an open space preservation development satisfies all applicable requirements of Chapter 17, all requirements of this Section 2.21, and Section 2.13, the Planning Commission shall approve the site plan.
- F. Development Requirements:
  - 1. At least fifty (50) percent of the land proposed for development under the provisions of this Section shall remain in a perpetually undeveloped state as permanent open space. The following areas shall not be considered as Open Space:
    - a. All areas within all street rights-of-way;
    - b. All areas within all private road easements;
    - c. Any easement for overhead utility lines, unless adjacent to open space;
    - d. The area within a platted lot or site condominium unit;
    - e. Parking areas and driveways;
    - f. Detention and retention ponds;
    - g. Community drain fields;
    - h. Areas devoted to community water supply or sanitary sewer treatment systems;

- i. Marinas;
  - j. Clubhouses and swimming pools; and
  - k. Golf courses.
- 2. A portion of the open space shall be located along the perimeter street frontage abutting the land. The depth of this area shall be at least fifty (50) feet, not including public right-of-way, and this area shall be left in its natural condition or be landscaped to help preserve or enhance the existing views.

## Section 2.22 – RESIDENTIAL SCALE SOLAR FACILITIES

Residential Scale Solar Facilities are treated as an accessory structure. Residential Scale Solar Facilities shall meet the standards of this section.

- A. Residential Scale Solar Facilities shall be sized and intended only to supplement the electricity need at the property on which they are located.
- B. Such structures may be located in the side or rear yard, and must comply with the rear and side yard setback requirements.
- C. Roof mounted solar facilities are permitted provided they do not extend beyond the surface or peak of the roof by more than 24 inches. In no event shall the solar facility exceed the maximum height of the building on which they are located.
- D. A free standing Residential Scale Solar Facility shall not exceed a height of fifteen (15) feet as measured from the supporting ground.
- E. The installation of a Residential Scale Solar Facility shall meet all applicable structural and electrical codes.

## Section 2.23 – WIND POWERED GENERATORS

Wind Powered Generators are treated as an accessory structure. Wind Powered Generators shall meet the standards of this section.

- A. Wind Powered Generators shall be sized and intended only to supplement the electricity need at the property on which they are located.
- B. Such structures shall only be located in the rear yard, and must comply with the rear and side yard setback requirements.
- C. The diameter of the generator blades shall not exceed eight (8) feet.
- D. A free standing Wind Powered Generator shall comply with the maximum height permitted for the zoning district. A Wind Powered Generator attached to the primary use may not be taller than the roof to which it is attached or thirty-five (35)

whichever is less.

- E. A Wind Powered Generator shall be so located on the premises that a distance at least equal to the height of the generator blades at their highest point is provided to the nearest property line.
- F. The installation of a Wind Powered Generator shall meet all applicable structural and electrical codes.



## CHAPTER 3

### SIGNS

**PURPOSE** - The purpose of regulating signs is to prevent the distraction of and obstruction of vision, to ensure safe travel by pedestrians, motorized and non-motorized vehicles, in addition to serving to protect the aesthetics, and to assist in maintaining the rural character of Elk Rapids Township.

**Section 3.01 - AUTHORIZED SIGNS** (without a Permit required)

The following signs are permitted on private property in any zone and may be erected and maintained, as provided for herein, without a permit being required.

- A. Official Signs - All signs (on or off premise) erected by any governmental unit or political subdivision.

Number Limitation:	None
Size Limitations:	None
Time Limitations:	Permanent

- B. Residential Identification Signs - On-premise signs primarily intended to identify the name and/or address of the occupants of a residence.

Number Limitation:	One (1)
Size Limitations:	Ten (10) square feet
Time Limitations:	Permanent

- C. Realtor or Builder Signs - On-premise signs identifying premises for sale or lease or under construction.

Number Limitation:	One (1)
Size Limitations:	Nine (9) square feet
Time Limitations:	May continue until the premises are sold, leased or completed and occupied by new residents.

- D. Realtor or Builder Lead-In Signs - All signs placed on or off-premises that lead or direct a potential buyer or supplier to a remotely located residence or construction site.

Number Limitation:	One (1) per construction site or residence(s).
Size Limitation:	Two (2) square feet
Time Limitation:	May continue until the premises are sold, leased or completed by the new residents.

- E. New Subdivision (Lots for sale) Signs - On premise signs advertising lots for sale in a new plat or other development.

Number Limitation:	One (1) per access road from the major public highway.
Size Limitation:	Fifty (50) square feet
Time Limitation:	May remain until ninety (90%) percent of the lots are sold.

- F. Subdivision or Resort Area Identification Signs - On premises signs which identify a subdivision or other collection of vacation, residential or resort properties.

Number Limitation:	One (1) per access road from the major public highway.
Size Limitation:	Fifty (50) square feet
Time Limitation:	Permanent

Section 3.02 - SEASONAL OR TEMPORARY SIGNS (without a Permit required)

The following signs are permitted in any zone and may be erected and maintained, as provided for herein, without a permit being required provided they are not located in the public right of way and do not obstruct the vision of the motoring public.

- A. Garage Sale, Yard Sale or Private Sale Signs - All signs identifying such sales not to exceed two (2) square feet are permitted as a part of the Yard Sale Ordinance provisions.
- B. Political Signs - All such signs not to exceed sixteen (16) square feet may be displayed during any political campaign, but the same are to be removed as soon after the election as possible.

Section 3.03 - AUTHORIZED SIGNS (with a permit required)

The following signs are permitted in any zone specified and may be erected and maintained, as provided for herein, after having obtained all necessary permit(s).

- A. Business Identification Signs – On premise signage that identifies a business or other commercial enterprise. A permanently fixed changeable copy sign may be used in combination as an integral part with a business identification sign.

Number Limitation:	Two (2)
Size Limitation:	Fifty (50) square feet total signage
Time Limitation:	Permanent
Zones Allowed:	C & M Zones

Winery Identification Sign – On premise signage that identifies a winery authorized in Section 6.01(O) is permitted. A permanently fixed changeable copy sign may be used in combination as an integral part of the signage provided the following standards are met.

Number Limitation:	Two (2)
Size Limitation:	Fifty (50) square feet total signage
Time Limitation:	Permanent

Farm Market and Roadside Signs – On premise signage that identifies the business being operated on the farm.

Number Limitation:	Two (2)
Size Limitation:	Sixteen (16) square feet each
Time Limitation:	Permanent
Zones Allowed:	“A” - Zone

B. Off-Premises commercial Signs - Off-premises signs and billboards may be established in the Commercial and Manufacturing zone district classification provided that they meet the following conditions:

1. Not more than three billboards may be located per linear mile of street or highway regardless of the fact that such billboards or signs may be located on different sides of the subject street or highway. The linear mile measurement shall not be limited to the boundaries of the Township of Elk Rapids where the particular street or highway extends beyond such boundaries. Double-faced billboard structures (i.e., structures having back-to-back billboard faces) and V-type billboard structures having only one face visible to traffic proceeding from any given direction on a street or highway shall be considered as one billboard. Additionally, billboard structures having tandem billboard faces (i.e., two parallel billboard faces facing the same direction and side-by-side to one another) shall be considered as one billboard. Otherwise, billboard structures having more than one billboard face shall be considered as two billboards and shall be prohibited in accordance with the minimum spacing requirement set forth in Subsection “2” below.
2. No billboard or off-premises sign shall be located within 1,000 feet of another billboard or off-premises sign abutting either side of the same street or highway.
3. No billboard or off-premises sign shall be located within 200 feet of a residential zone, existing residence, church or school. If the billboard or sign is illuminated, this required distance shall instead be 300 feet.
4. No billboard or off-premises sign shall be located closer than 75 feet from a property line adjoining a public right-of-way or 10 feet from any interior boundary lines of the premises on which the billboard or sign is located.
5. The surface display area of any side of a billboard may not exceed 300 square feet. The surface display of any other off-premises sign may not exceed 50

square feet. In the case of billboard structures with tandem faces, the combined surface display area of both faces may not exceed 300 square feet.

6. The height of a billboard shall not exceed twenty (20) feet above the (1) grade of the ground on which the billboard sits or (2) the grade of the abutting roadway, whichever is higher.
7. No billboard shall be on top of, cantilevered or otherwise suspended above the roof of any building.
8. A billboard or off-premises sign may be illuminated, provided such illumination is concentrated on the surface of the sign and is so located as to avoid glare or reflection onto any portion of an adjacent street or highway, the path of oncoming vehicles, or any adjacent premises. In no event shall any billboard or sign have any flashing or intermittent lights, nor shall the lights be permitted to rotate or oscillate.
9. A billboard must be constructed in such a fashion that it will withstand all wind and vibration forces which can normally be expected to occur in the vicinity. A billboard must be maintained so as to assure proper alignment of structure, continued structural soundness, and continued readability of message.
10. A billboard established within a Commercial or Manufacturing zone as defined in the "Highway Advertising Act of 1972" (1972 PA 106, as amended) bordering interstate highways, freeways or primary highways as defined in this Act shall, in addition to complying with the above conditions, also comply with all applicable provisions of said Act and the regulations promulgated there under, as such may from time to time be amended.
11. Billboards shall be prohibited along the following designated corridors of special scenic and/or historic significance:
  - a. US-31 North from the Village of Elk Rapids boundary North to Winters Road.
  - b. Elk Lake Road from the Village of Elk Rapids boundary South to Townline Road.
  - c. Cairn Highway from the Village of Elk Rapids boundary Northeast to Birch Lake Road.
  - d. North Bayshore Drive from the Village of Elk Rapids boundary North to Inwood Harbor.
12. No person, firm or corporation shall erect a billboard or other off-premises sign within Elk Rapids Township without first obtaining a permit therefore from the Elk Rapids Township Zoning Administrator, which permit shall be granted

upon a showing of compliance with the provisions of this Ordinance and payment of a fee therefore as established by the Elk Rapids Township Board in their Fee Resolution Schedule. Permits shall be issued for billboards and other off-premises signs for a period of one year, but shall be renewable annually upon inspection of the structure and face by the Elk Rapids Township Zoning Administrator confirming continued compliance with this ordinance and payment of the billboard fee.

#### Section 3.04 - PERMIT PROCEDURE

All required permits for signs are to be obtained from the Zoning Administrator with the completion of a Sign Permit Application that shall contain at least the following information:

- A. The name, address and telephone number of the Applicant(s).
- B. Location of the lot on which sign or advertising structure is to be placed.
- C. A site plan showing the proposed location of the sign on the property drawn to scale.
- D. A scale drawing of the proposed sign to be retained by the Zoning Administrator.
- E. The name, address and telephone number of the party erecting the sign.
- F. Written consent of the property owner.
- G. Detailed information regarding the type, intensity, and hours of lighting.
- H. Issuance of Permit - It shall be the duty of the Zoning Administrator, upon the filing of an application for a sign erection permit to examine the plans and specifications and other data and the premises upon which it is proposed to erect the sign or other advertising structure and if it shall appear that the proposed structure is in compliance with the requirements of this Ordinance, the remaining provisions of the County Building Code and State law, he/she shall then issue the erection permit. If the work authorized under a sign erection permit has not been completed within six (6) months of the date of issuance, the permit shall become null and void.
- I. Permit Fees - Every applicant, before being granted a permit for any sign requiring a permit other than a temporary sign, shall pay to the Township Treasurer a fee as established in the Fee Resolution Schedule.

#### Section 3.05 - GENERAL REGULATIONS RELATING TO SIGNS & BILLBOARDS

- A. No portable or trailer based signs shall be permitted.

- B. No sign with the exception of Official signs shall be located upon any highway or road right-of-way.
- C. No sign shall impede traffic or obstruct any view of the same from any sidewalk, driveway or roadway.
- D. No sign shall remain if obsolete or otherwise no longer pertinent.
- E. No sign shall remain if not maintained in good repair and kept freshly painted.
- F. Illumination. When illumination of a sign or billboard is proposed, or the Sign is illuminated, illumination shall comply with the following requirements:
  - 1. Illumination of the sign shall not adversely affect any neighboring residence.
  - 2. Illumination shall not be flashing, blinking, intermittent, video, or an on-and-off type of lighting.
  - 3. Illumination shall be arranged so that light is directed away from adjacent properties and away from any public right-of-way, and so that no direct sources of light are visible to any motorist or pedestrian located in a public right-of-way or street easement or from any adjacent property.
  - 4. Any external lighting of signs shall be downward facing or otherwise directed to illuminate only the sign face.
  - 5. Illumination shall be of a continuous white light.
  - 6. The light from any illuminated source shall be designed so that the light intensity or brightness at the property line shall not exceed one (1) foot candle.
- G. All signs that require a permit shall have the permit number and date issued recorded thereon in letters not less than one (1) inch in height.
- H. All electrical signs shall be erected and maintained according to all applicable codes.
- I. All references to square footage include the frame and borders in addition to the sign face. Double faced signs having only one face visible to traffic proceeding from any given direction on a street or highway shall be considered as one sign.
- J. No sign shall be erected or maintained on the property of another without written permission of that property owner.
- K. No sign shall be higher than fourteen (14) feet above the grade of the ground on which the sign sits or the grade of the abutting roadway, whichever is higher.

- L. Signs featuring flashing, strobe or other varied lighting effects are strictly prohibited.
- M. No signs shall contain moving parts.

Section 3.06 – CONTINUATION OF NONCONFORMITIES

Nonconforming signs may be continued and shall be maintained in good condition, but shall not be:

- A. Expanded or altered so as to increase the degree of nonconformity of the sign.
- B. Re-established after its discontinuance for six (6) months.
- C. Continued in use after cessation or change of the business or activity to which the sign pertains; or
- D. Re-established after damage or destruction if the estimated cost of reconstruction exceeds fifty percent (50%) of the estimated replacement cost, as determined by the Zoning Administrator.
- E. Relocated or replaced.

## CHAPTER 4

### NONCONFORMING STRUCTURES, LOTS, AND USES

#### Section 4.01 - PURPOSE AND INTENT

Nonconforming structures, lots, and uses which do not conform to one or more of the provisions and/or requirements of the Elk Rapids Township Zoning Ordinance or any subsequent amendments thereto, but were lawfully established prior to the time of adoption of this Zoning Ordinance or subsequent amendment thereto, may be continued, but no such structure or use shall be enlarged or extended, nor nonconforming lot created, except as provided herein.

#### Section 4.02 – NONCONFORMING STRUCTURES

- A. Definition - A structure lawfully existing at the time of adoption of the Zoning Ordinance, or any amendments thereto, that does not conform to the requirements of the zone district in which it is located.
- B. A nonconforming structure may be continued provided it remains otherwise lawful. A nonconforming structure shall not be enlarged or altered in any way, which increases its degree of nonconformity, unless the Zoning Board of Appeals grants a variance. Degree of nonconformity shall include increasing the extent of the nonconformity and/or expanding the area or volume of the portion of the structure that is nonconforming.
- C. If a nonconforming structure is moved it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- D. Any expansion of a nonconforming structure shall not occupy any portion of the lot which is necessary for meeting any off-street parking requirements.
- E. Any expansion of a nonconforming structure shall result in a total living space floor area of at least nine hundred sixty (960) square feet.
- F. A nonconforming structure containing a nonconforming use shall not be expanded unless the use has been changed to a conforming use and meets the other applicable requirements of this section.
- G. Termination by Destruction
  - 1. If a nonconforming building or structure is damaged or destroyed to the extent of sixty percent (60%) or greater of its assessed value by fire, flood, wind or other calamity, its reconstruction and subsequent use shall only occur after review and approval by the Zoning Board of Appeals. Approval by the Zoning Board of Appeals shall comply with the requirements set for in Section 18.06 of this Ordinance.



2. A nonconforming building damaged less than sixty percent (60%) of its assessed value may be restored to its original foot print and volume at the time prior to such damage and its use resumed.
3. If the Zoning Board of Appeals grants the appeal for restoration, the restoration shall be completed within one (1) year from the date of approval, unless otherwise authorized by the Zoning Board of Appeals.

#### Section 4.03 - NONCONFORMING LOTS

- A. Definition - Any lot of record, outlot, or parcel of land lawfully existing at the effective date of this Ordinance, or amendments thereto, which does not meet the land area or dimensional requirements of the zone district in which it is located.
- B. A principal building and customary accessory buildings may be erected on a nonconforming lot provided all zoning requirements are met. If variation of a setback or other zoning restriction is required in order to erect a structure on a nonconforming lot, then such structure shall only be permitted if a variance is granted by the Zoning Board of Appeals.
- C. Contiguous nonconforming lots under the same ownership - If two or more contiguous lots or parcels, or portions of lots or parcels, are under the same ownership and do not individually meet the lot width, depth, and/or area requirements of the district in which the lot or parcel is located, then those contiguous lots, parcels, or portions thereof, as required to meet the minimum lot size requirement of the district, shall be considered one lot or parcel for the purpose of this Ordinance. No portion of such lot or parcel shall be used or divided in a manner that diminishes compliance with the lot width, depth, and /or area requirements as established by the district in which it is located.

#### Section 4.04 – NONCONFORMING USES

- A. Definition - A use lawfully existing within a structure or on land at the time of adoption of this Ordinance, or any amendments thereto, and which does not conform to the regulations of the zone district in which it is located.
- B. Nonconforming Signs, Section 3.06, Nonconforming Wireless Telecommunications Towers and Antennas, Section 15.09 and Sexually Oriented Businesses, Section 16.16 are subject to the specific nonconforming regulations set forth in each aforementioned section of this Ordinance.
- C. Class A Nonconforming Use

1. Class A nonconforming uses are nonconforming uses that have been officially reviewed and approved by the Elk Rapids Township Planning Commission according to Section 4.04 F.
2. Class A nonconforming uses that were approved prior to the adoption of this ordinance are subject to the individual conditions set forth at the time of review.
3. Class A nonconforming use approval includes meeting specific criteria listed in Section 4.04-F, along with any additional conditions or requirements deemed necessary by the Planning Commission.
4. A Class A nonconforming use shall not be considered a detriment to the Township or to the surrounding neighborhood in which it is located.
5. All applications for expansion of a Class A nonconforming use shall meet the requirements of Section 4.04 F. However, a Class A nonconforming use may be extended throughout any part of a building, which was designed for such use, and which existed at the time the use became nonconforming without additional application to the Township Planning Commission as outlined in Section 4.04 F.
6. Any structural expansion of a Class A nonconforming use shall meet the requirements of the zoning district in which it is located.
7. Any proposed changes or modifications of a Class A nonconforming use, including but not limited to, change of use, addition of buildings associated with such use, increasing the intensity of the use, or previously approved site plan associated with the nonconforming use, shall require application and approval according to Section 4.04 F.

D. Class B Nonconforming Uses

1. The intent of this ordinance is to eliminate and discourage the continuance of any Class B nonconforming use. However, a Class B nonconforming use may lawfully continue only in a manner similar to when the use became nonconforming, including type, size and intensity.
2. Class B nonconforming uses shall not be enlarged so as to make use of more land area than used at the time of becoming nonconforming.
3. Class B nonconforming uses are legal nonconforming uses as defined in Section 1.03, Nonconforming Structures, Lots and Uses, Subsection 3, that have not received a Class A upgrade.
4. Class B nonconforming uses shall not be expanded in any form, including structurally or use intensity.

5. A Class B nonconforming use shall only be changed to a use that is permitted within the zone district in which the parcel is located.
- E. All nonconforming uses not designated as Class A by the Elk Rapids Township Planning Commission are Class B nonconforming uses.
- F. Procedure for obtaining Class A designation or modification of a Class A designation:
1. An application shall be filed meeting the requirements of Section 17.04 in Chapter 17, Site Plan Review. The application shall also include a written description of the existing nonconforming use and the purpose for the Class A request. The Planning Commission may require additional Information which may assist in the decision making process.
  - 2.. Complete applications shall be heard in a public hearing before the Planning Commission pursuant to the procedure described in Section 19.07-B of this Ordinance. A decision or condition related to a Class A upgrade approval or denial shall not be appealable to the Zoning Board of Appeals.
  3. The applicant must provide a written statement to the Planning Commission, which clearly addresses each of the criteria below. The written statement shall be of substantial content illustrating how the nonconforming use meets each of the criteria. If the information provided is not satisfactory to the Planning Commission, the application may be rejected or denied by the Planning Commission. Class A nonconforming uses are those which have been designated by the Planning Commission, after application by any interested person upon findings:
    - a. That the demand placed on essential services including, but not limited to, water, sewer, utilities, and roads, created by the nonconforming use shall not place an undue burden on the present infrastructure.
    - b. That the illumination on site shall be equal to or less than that of a typical single family home.
    - c. That the use shall not create the incentive for different or supporting uses on or off site that are inconsistent with the Elk Rapids Township Master Plan.
    - d. That the use shall not be injurious to the property neighbors, or its neighborhood, or change the essential character of the neighborhood.
    - e. That the use is a legal nonconforming use as defined in Section 1.03- Nonconforming Use.

- f. That continuance thereof shall not be contrary to the public health, safety, or welfare, or to the spirit of this Ordinance.
  - g. That no useful purpose would be served by strict application of the provisions or requirements of this Ordinance with which the use does not conform.
- 4. The Planning Commission may attach additional conditions when necessary to assure that the use does not become contrary to the public health, safety, or welfare or the spirit and purpose of this Ordinance, which may include, but not limited to, hours of operation, noise level considerations, or overall general appearance.
- 5. A Class A nonconforming use shall not be changed to a different nonconforming use.
- 6. No vested interest shall arise out of a Class A designation.
- 7. Revocation of a Class A designation - Any Class A designation shall be revoked, following the same procedure required for designation, upon a finding that as a result of any change of conditions or circumstances the use no longer qualifies for Class A designation.
- 8. Lands or structures on which a zoning violation exists at the time of application shall not be considered for a Class A nonconforming upgrade.
- G. Abandonment of any Nonconforming Use - If there is evidence of substantial abandonment of the nonconforming use on any parcel of land or structure and the abandonment continues for a period of one (1) year, then any further use thereof shall conform to the provisions of this Ordinance. In addition, any accessory use, building, or sign related to a nonconforming use shall also be discontinued, unless it shall thereafter conform to all regulations of the Ordinance.
- H. When a Class A or B nonconforming use is replaced by a permitted use, it shall thereafter conform to the regulations of the district in which the use is located and the nonconforming use may not be resumed.

#### Section 4.05 – GENERAL CONDITIONS

The following general conditions apply to all nonconforming structures, nonconforming lots, and nonconforming uses:

- A. Change of Tenancy or Ownership - The tenancy or ownership of nonconformity may be transferred or changed.

- B. Normal Maintenance and Repairs - Normal maintenance and incidental repairs, including repair or replacement of non-bearing walls, fixtures, wiring or plumbing, may be performed on any nonconforming structure or structure containing a nonconforming use. Maintenance or repairs that increase the degree of nonconformity shall not occur unless the Zoning Board of Appeals grants a variance.

## **CHAPTER 5**

### **DISTRICTS**

#### **Section 5.01 – ZONES**

To carry out the purposes of this Ordinance, Elk Rapids Township shall be divided into the following zones:

- |     |                                |
|-----|--------------------------------|
| A   | Agricultural Zone              |
| R-1 | Residential Zone               |
| R-2 | Residential Zone               |
| R-3 | Multiple Family Apartment Zone |
| E   | Environmental Zone             |
| C   | Commercial Zone                |
| M   | Manufacturing Zone             |
| P-D | Planned Development Zone       |

#### **Section 5.02 – BOUNDARIES OF ZONES MAP**

The boundaries of such zones, shown upon the map attached hereto, which is incorporated herein by reference, and made a part hereof are hereby established, said map being designated as Zoning Map of the Township of Elk Rapids, Antrim County, Michigan. Said map and all the notations, references and other information thereon shall be as much a part of this Ordinance as if the matters and information set forth by said map were all fully described herein.

#### **Section 5.03 – ERECTION, ALTERATION AND USE OF BUILDING**

Except as herein provided, no structure shall be erected or altered nor shall any building or premises be used for any purpose other than is permitted in the zone in which such building or premises is located.

## CHAPTER 6

### “A” - AGRICULTURAL ZONE

#### Section 6.01 - PERMITTED USES

No building or part thereof shall be hereafter used, erected, or altered, or land used, in whole or in part, in the A-Agricultural Zone except for:

- A. Those uses permitted in the R-2 Residential Zone under the terms provided for such uses, except as altered in this Chapter.
- B. Farms for both general and specialized farming, together with farm dwellings and buildings, and other installations usual to such farms, including farm markets and roadside stands, provided that such markets and stands sell farm products.
- C. Greenhouses, nurseries, orchards, groves and vineyards, apiaries, farms for breeding of domestic animals, and sanctuaries for wild birds and animals provided the sanctuaries shall be approved by the Michigan Department of Natural Resources.
- D. Agricultural warehouses and storage plants, milk processing plants, primary processing plants for non-animal farm products, and such other enterprises connected with farm production as shall be approved by the Planning Commission.
- E. Home occupations.
- F. Forest preserves and farm woodlots.
- G. Public and privately-owned parks, playgrounds and golf courses with customary service buildings and structures incident thereto.
- H. Public-owned buildings excluding sewage treatment plants, solid waste disposal plants, warehouses, garages and shops or storage yards.
- I. Additional dwellings on any farm for the use of farm or domestic employees of the owner or his lessees, provided there is only one (1) such tenant house in addition to the main dwelling for each ten (10) acres of farm land, and provided that each such tenant house is surrounded by sufficient land to provide a future separate lot of one and one-half (1 ½) acres and a minimum width at the building line of two hundred (200) feet.
- J. Migrant workers' facilities approved in accordance with state law.
- K. Any agricultural, horticultural, or husbandry use unless otherwise specifically prohibited by this Ordinance.

- L. Country arts or craft type shops of a similar nature where the business is conducted within structures existing prior to May 29, 1979.
- M. The following uses may be permitted within the A-Zone upon approval as a special exception by the Planning Commission pursuant to Section 19.07: chicken hatcheries, poultry farms, processing plants for dressing of poultry and domestic animals, farms for breeding of poultry, breeding and boarding kennels, and extraction of mineral resources less than two (2) acres in surface area.
- N. Septage Waste Storage – Only a closed septage waste storage tank regulated under Public Act 381 of 2004, as amended may be permitted upon approval of a special exception by the Planning Commission pursuant to Section 19.07 of this Ordinance.
- O. Wineries, with or without a tasting room applying the following standards:
  - 1. An application for a winery shall include a site plan in accordance with this ordinance, Chapter 17, with detail on parking, sanitation, refuse and solid waste management, outdoor lighting, fencing, crowd control, on-site vehicular and pedestrian circulation, details on any public address system and equipment, signage and related existing and proposed facilities, as applicable. In addition, the application shall include a complete written description of the proposed use, the services to be provided, the maximum number of patrons anticipated on site at any time, hours of operation, activities to be conducted and any other information necessary to properly convey the nature of the facility proposed. Such written description shall be considered a part of the site plan application to be relied upon by the Township in granting any approval.
  - 2. The winery shall comprise only a small part of the property, so that the agricultural use of the site is predominant and the winery use is secondary. The Township may approve a proposed departure from this requirement if it finds that the proposed winery and its activities are substantially farm-related or that the establishment and its activities would not have impacts on the vicinity similar to impacts generated by a commercial business, including consideration of traffic, light pollution, noise, blowing trash, signage, odor, and aesthetics.
  - 3. A winery shall be located on a parcel of at least ten (10) acres.
  - 4. All buildings associated with the winery shall be set back at least 100 feet from any lot line.
  - 5. Tasting rooms and food service activities, if provided, shall at all times comply with any and all requirements of the Health Department of Northwest Michigan and the Michigan Liquor Control Commission and evidence of applicable agency review and approval shall be provided to the Township.



6. The Township may require landscaping and other features to screen the use from adjacent properties and the Township may impose limitations on the operation of the facility to protect adjacent properties from its impacts. Such limitations may pertain to hours of operation, outdoor lighting, outdoor activities, noise, and other elements.
7. The applicant shall demonstrate that all vehicular parking will occur on the site. A pervious parking surface is permitted, subject to demonstration by the applicant that dust would be controlled.
8. This section is not intended to regulate farming and associated farming related activities that are subject to the provisions of the Michigan Right to Farm Act, provided that generally accepted agricultural management practices (GAAMPs) are followed.
9. On premise signage that identifies a winery is permitted. A permanently fixed changeable copy sign may be used in combination as an integral part the signage provided the following standards are met.

Number Limitation:	Two (2)
Size Limitation:	Fifty (50) square feet total signage
Time Limitation:	Permanent

- P. Solar Energy Farms are permitted as a special land use. Planning Commission approval for the issuance of a special use permit (special exception) for a Solar Energy Farm establishment is only permitted when specified procedures and requirements, as outlined in this Section and Chapter 19, Section 19.07 are complied with, including the following.

1. **INTENT AND PURPOSE:** To allow and promote the use of solar energy within the Township as a clean alternative energy source and to provide associated placement, land development, installation and construction regulations for solar energy farm facilities subject to reasonable conditions that will protect the public health, safety and welfare. These regulations establish the minimum requirements for solar energy farm facilities, while promoting a renewable energy source in a safe, effective and efficient manner.
2. **STANDARDS:**
  - a. Minimum Lot Size: There is no minimum lot size.
  - b. Height Restrictions: All photovoltaic solar panels and support structures located in a solar energy farm shall be restricted to a maximum height of sixteen (16) feet. This includes when the panel(s) is at maximum tilt position.

- c. Setbacks: All photovoltaic solar panels and support structures associated with such facilities (excluding perimeter fencing) shall be set back a minimum of fifty (50) feet from all property lines. If the right-of-way exists as an easement, the fifty (50) foot setback shall be measured from the edge of the easement. Solar panels shall be kept at least two hundred (200) feet from an existing residential dwelling, measured to the nearest point on the residential structure. Any additional setback requirements in this Ordinance that exceed this requirement shall be adhered to, including but not limited to setbacks from streams, lakes, and wetlands.
- d. Safety/Access: A security fence (height and material to be proposed and reviewed/approved through the special use permit approval process) shall be placed around the perimeter of the solar energy farm and electrical equipment. Knox boxes and keys shall be provided at locked entrances for security personnel access.
- e. Glare: Solar energy farm facilities shall be located or placed so that concentrated solar glare shall not be directed toward or onto nearby properties or right-of-ways at any time of the day.
- f. Landscaping: The special use permit application for a solar energy farm shall include a proposed landscape plan prepared by a licensed landscape architect. This plan will be reviewed through the special use permit approval process to assure that the proposed facility is appropriately landscaped in relation to adjacent land uses and road right-of-ways. A landscape plan shall meet following standards:
  - (1) Plans: A plan view illustrating the landscape plan for the entire project and a rendered view illustrating the view from public right-of-ways.
  - (2) Buffer: A twenty five (25) foot wide landscape buffer shall consist of two (2) rows of staggered evergreen trees that at planting shall be minimum of four (4) feet in height. If a solar energy farm is adjacent to a residential dwelling or district, then the minimum height shall be six (6) feet at the time of planting. The evergreen trees shall be spaced no more than fifteen (15) feet apart on center, measured from the central trunk of one tree to the central trunk of the next tree. The buffer shall also consist of native grasses, wildflowers, or plants which will provide wildlife and pollinator habitat, soil erosion protection, and/or aid in strengthening the soil structure. The buffer shall be required under the following conditions:

- (a) Along the property line adjacent to all residential zoning districts
  - (b) If solar panels are located within two hundred (200) feet of a public road right-of-way.
  - (c) Along the property line for the portion of the project within a two hundred (200) foot radius of a residential dwelling in a nonresidential zoning district.
- (3) Credit for Existing Conditions: Existing topographical features and existing wooded areas may be accepted in lieu of or in combination with the above by approval of the Planning Commission.
- (4) Planting Timeline: The required trees shall be planted between April 1st and September 15th. If construction of the solar energy farm begins after August 15th, the required plantings shall be installed by May 1st the following calendar year.
- (5) Financial Guarantee: A bond, letter of credit, or cash surety shall be provided in the amount equal to one and one-half (1.5) times the cost of the required plantings that the Township shall hold until the next planting season.
- (6) Maintenance: The required plantings shall be continuously maintained in a healthy condition. Dead evergreen foliage shall be replaced.
- g. Local, State, and Federal Permits: Solar energy farms shall be required to obtain all necessary permits and licensing from Elk Rapids Township, Antrim County, State of Michigan, and U.S. Government as applicable prior to construction and shall maintain any necessary approvals as required by the respective jurisdictions or agencies.
- h. Electrical Interconnections: All electrical interconnections or distribution lines shall comply with all applicable codes and standard commercial large-scale utility requirements. Use of above ground transmission lines shall be prohibited within the site.

3. ADDITIONAL SPECIAL USE CRITERIA: In addition to the Site Plan Review criteria in Chapter 17 and special exception criteria in Section 19.07, the

applicant shall address the following topics in the application for a solar energy farm facility:

- a. Project Description and Rationale: Identify the type, size, rated power output, performance, safety and noise characteristics of the system including the transmission line/grid connection for the project. Identify the project construction time frame, project life, development phases (and potential future expansions) and likely markets for the generated energy.
- b. Visual Impacts: Graphically demonstrate the visual impact of the project using photos or renditions of the project with consideration given to setbacks and proposed landscaping.
- c. Environmental Analysis: Identify impacts on surface and ground water quality and any impacts to established natural or constructed drainage features in the area.
- d. Waste: Identify any solid or hazardous waste generated by the project.
- e. Lighting: Provide photometric plans showing all lighting within the facility. No light may adversely affect adjacent parcels. All lighting must be shielded from adjoining parcels. For example, lighting fixtures should be of the shoebox variety directing light downward not outward, including wall and pole mounted fixtures. Light poles are restricted to a maximum height of eighteen (18) feet.
- f. Transportation Plan: Provide a proposed access plan during construction and operational phases. Show proposed project service road ingress and egress locations onto adjacent roadways and the layout of facility service road system. Due to infrequent access following construction, it is not required to pave or curb solar energy farm access drives. It shall be required to pave and curb any driveways and parking lots used for occupied offices that are located on site.
- g. Public Safety: Identify emergency and normal shutdown procedures. Identify potential hazards to adjacent properties, public right-of-ways and to the general public that may be created.
- h. Sound Limitations: Identify noise levels at the property lines of the project when completed and operational.
- i. Telecommunications Interference: Identify any electromagnetic fields and communications interference that may be generated.

- j. Life of the Project and Final Reclamation: Describe the decommissioning and final reclamation plan after the anticipated useful life or abandonment/termination of the project. This includes supplying evidence of an agreement with the underlying property owner that ensures proper removal of all equipment and restoration of the site within six (6) months of decommissioning or abandonment of the project. To ensure proper removal of the project upon abandonment/termination, a bond, letter of credit or cash surety shall be:
- (1) In an amount approved by the Planning Commission to be no less than the estimated cost of removal and may include a provision for inflationary cost adjustments;
  - (2) Based on an estimate prepared by the engineer for the applicant, subject to approval of the Township Board;
  - (3) Provided to the Township prior to the issuance of a zoning permit;
  - (4) Used in the event the owner of the project or the underlying property owner fails to remove or repair any defective, abandoned or terminated project. The Township, in addition to any other remedy under this Ordinance, may pursue legal action to abate the violation by seeking to remove the project and recover any and all costs, including attorney fees

#### Section 6.02 - HEIGHT, AREA AND YARD RESTRICTION

- A. Every lot in this zone shall have:
1. An area of 1.5 acres and a width at all points from front to back of at least (200) two hundred feet.
  2. A front yard of at least fifty (50) feet.
  3. Two (2) side yards totaling at least seventy (70) feet, the minimum of each side yard shall be thirty five (35) feet.
  4. A rear yard of at least thirty five (35) feet.
- B. The front and rear yard setbacks shall be maintained across the entire width of the lot.
- C. No dwelling, building, or structure shall exceed a height of two and one-half (2 ½) stories or thirty-five (35) feet, whichever is the lesser, except as otherwise provided

by this Ordinance. Barns, silos and similar agricultural related accessory buildings shall not exceed ninety (90) feet in height.

- D. Every dwelling shall have a minimum usable floor area of nine hundred and sixty (960) square feet. The dwelling shall not be made up of additions of a dissimilar type or quality of construction or materials. No dimension shall be less than twenty (20) feet.

#### Section 6.03 – CONFORMANCE

In this zone, no building shall hereafter be erected, altered or moved into said zone or land used for the purpose of conducting any form of commercial, business, or industrial enterprise whatever, except as stated in the foregoing provisions of this Chapter.

#### Section 6.04 – GENERAL PROVISIONS

See Chapter 2, GENERAL PROVISIONS for supplemental requirements and height, area, and yard restrictions.

## CHAPTER 7

### “R-1” - RESIDENTIAL - ONE FAMILY ZONE

#### Section 7.01 - PERMITTED USES

No building or part thereof in a R-1 Residential Zone shall hereafter be used, erected, altered or converted, or land used, in whole or in part, except for:

- A. One-family dwellings with accessory uses as defined in this Ordinance.
- B. Churches and accessory religious facilities where located at least one hundred (100) feet from any other lots.
- C. Public, parochial, and private schools, where located at least three hundred (300) feet from any other lot.
- D. Public libraries, public museums, and public art galleries, where located at least one hundred (100) feet from any other lot.
- E. Public parks, playgrounds, and community centers, provided that any buildings located thereon shall be at least one hundred (100) feet from any other lot.
- F. Parking requirements for all permitted uses shall be governed by Chapter 14.
- G. A state licensed residential facility developed pursuant to P.A. 287 of 1972, as amended, or P.A. 116 of 1973, as amended.

#### Section 7.02 - HEIGHT, AREA, AND YARD RESTRICTIONS OF PLATTED LOTS

Every platted lot in this zone shall meet the following requirements:

- A. An unoccupied front yard of at least fifty (50) feet.
- B. Two (2) side yards totaling at least twenty (20) feet; the minimum of each side yard shall be ten (10) feet.
- C. A rear yard of thirty-five (35) feet.
- D. A minimum width of one hundred (100) feet at all points front to back.
- E. The front and rear yards shall be maintained across the entire width of the lot. All yards shall be kept clear and unobstructed, and shall not be used for the storage of vehicles, equipment, materials, rubbish or debris.
- F. No building or structure shall exceed a height of two and one-half (2 ½) stories or thirty-five (35) feet, whichever is the lesser, unless as otherwise provided by this Ordinance.

- G. Each dwelling unit shall have a minimum usable floor area of nine hundred sixty (960) square feet. The dwelling shall not be made up of additions of a dissimilar type or quality of construction or materials. No dimension shall be less than twenty (20) feet.
- H. Lot Area - All lots in this zone shall have a minimum lot area of twenty thousand (20,000) square feet.
- I. The maximum lot coverage shall not exceed thirty (30) percent of the gross lot area. Lot coverage shall include the area occupied by structures, dwellings, accessory structures, parking areas, driveways, patios, decks and other impervious surfaces.

#### Section 7.03 - HEIGHT, AREA AND YARD RESTRICTIONS OF UNPLATTED LOTS

Except as provided in this Section 7.03, the height, area and yard requirements for unplatted lots shall be the same as provided in Section 7.02.

All unplatted lots shall have a minimum lot area of twenty five thousand (25,000) square feet.

#### Section 7.04 - BED AND BREAKFAST (TOURIST HOME) (SPECIAL EXCEPTION)

Bed & Breakfast (Tourist Home) shall be an incidental and secondary use of the dwelling unit for business purposes. The intent of this ordinance is to insure compatibility of such business use with other permitted uses of the residential districts and with the residential character of the neighborhoods involved; and, that the operation and continuance of a Bed and Breakfast (tourist home) thereof would not be contrary to the public health, safety, or welfare of the neighborhood; that the use or structure does not and is not likely to significantly depress the value of nearby properties; and that the use or structure was lawful at the time of its inception. Planning Commission approval for the issuance of a special use permit (special exception) for Bed & Breakfast (tourist home) establishments when specified procedures and requirements, as outlined in this Section and Chapter 19, Section 19.07 are complied with:

- A. The issuance of a special use permit for the operation of a Bed & Breakfast (tourist home) is subject to the following conditions in addition to conditions contained elsewhere in this ordinance:
  - 1. The Bed & Breakfast (tourist home) is occupied and operated by the owner(s) listed on the Special Use Permit and is a single family residential dwelling.
  - 2. The exterior appearance of the structure shall not be altered from its single family character. There shall be at least two (2) exits to the outdoors.
  - 3. All rooms utilized for sleeping shall be part of the primary residential structure and shall not have been specifically constructed or remodeled for rental purpose. A guest room shall not be located in a basement or an attic. There shall be no separate or additional kitchen facility for the guests.



4. The rooms utilized for sleeping are a part of the primary residential use, are not specifically constructed for rental purposes and are limited to a maximum number of four (4). The rental sleeping rooms shall have a minimum size of one hundred (100) square feet for each two (2) occupants with an additional thirty (30) square feet for each occupant to a maximum of four (4) occupants per room who stay no more than seven (7) consecutive days.
  5. Signs shall not exceed six (6) square feet. There shall be no neon, flashing, moving, etc. type of signs.
  6. Off-street parking shall be provided at a ratio of one parking space per rental room plus two additional spaces. A detailed parking site plan is to be submitted at the time of application. The proposed parking area shall be landscaped in such a manner that the residential character of the property is preserved.
  7. A person who does not reside at the home shall not be employed to assist in the conduct of a Bed & Breakfast (tourist home) except as usual for a single family residence.
  8. The home shall not be used by the public or paying guests for the hosting of receptions, private parties or the like.
  9. A list shall be maintained of all guests and their place of residence.
  10. A fire escape plan shall be developed and graphically displayed in each guest room. Fire extinguishers and smoke detectors are to be displayed and maintained throughout the home per the Antrim County Building Department.
  11. An initial on-site compliance inspection of the facility shall be satisfactorily completed by the Zoning Administrator prior to the commencement of operation. Reinspection shall be performed every third year. A compliance inspection fee shall be charged. The initial inspection fee and reinspection fees shall be determined by the Township Board Fee Resolution Schedule.
- B. Other conditions or stipulations may be required if deemed necessary by the Planning Commission to protect the surrounding properties and property values.
- C. The rental of recreation equipment such as snowmobiles, ATV or similar vehicles, in conjunction with the operation of a Bed & Breakfast (tourist home) shall be prohibited.
- D. Lapse of Operation. The active operation of a Bed & Breakfast (tourist home) shall not have lapsed for more than nine (9) months.
- E. There shall be no additional Bed & Breakfast (tourist home) allowed within twenty-five hundred (2,500) feet of an existing establishment.

- F. Property owners within one thousand (1,000) feet of a proposed establishment shall be notified by mail of an impending Bed & Breakfast (tourist home) special use permit application hearing.
- G. Previously established Bed & Breakfast (tourist home) in the Township shall comply with the conditions and regulations of this Ordinance. Any amendments to this ordinance shall be retroactive for all established Bed & Breakfast (tourist home) establishments in the Township with compliance being mandatory.

#### Section 7.05 – GENERAL PROVISIONS

See Chapter 2, GENERAL PROVISIONS for supplemental requirements and height, area, and yard restrictions.

#### Section 7.06 - GROUP RETREAT CENTER (SPECIAL EXCEPTION USE)

- A. A Group Retreat Center is only permitted as a Special Exception Use in the R-1 Zone. The Group Retreat Center including all uses and accessory uses and structures shall be completely located in the R-1 Zone. The issuance of a special exception use permit for the operation of a Group Retreat Center is subject to the following conditions and the provisions and procedure of Section 19.07:
  - 1. A Group Retreat Center can only be considered on a parcel of at least seven (7) acres in size.
  - 2. The exterior appearance of the structure shall maintain its single-family residential character.
  - 3. All meals of the Group Retreat Center are to be provided in the main structure.
  - 4. One sign is permitted not to exceed six (6) square feet in area. Illumination is not permitted. The location of the sign shall meet the requirements of Chapter 3 of the Zoning Ordinance.
  - 5. Parking shall be provided at a ratio of one (1) parking space per three (3) guests and one parking space for each employee. The applicant shall provide parking spaces for the maximum number of guests anticipated for the center plus employees. The parking area shall meet the standards of Chapter 14 except the Planning Commission may consider a porous parking surface to reduce storm water runoff.
  - 6. Sleeping quarters shall only be permitted in the existing single-family dwelling and no expansion of the existing single family dwelling shall be permitted.
  - 7. Existing accessory structures on the property may be converted to a use associated with the Group Retreat Center. Any proposed use of an accessory structure or building shall be declared in the application material

and subject to review and approval by the Planning Commission. Any proposed building or structure to be added to the property shall have a residential character and specified in the application material. Additional buildings must be reviewed and approved by the Planning Commission as a new application if not part of the original application.

8. Site and Structure Requirements

- Minimum parcel size: 7 acres
- Minimum existing single family Dwelling size: 8,000 sq. ft. (Floor Area)
- Setbacks:
  - Front Yard 50'
  - Side Yard 30'
  - Rear Yard 50'
- Minimum lot width: 300'
- Maximum structure height: 2 ½ stories or 35'
- Maximum lot coverage: 30%

Lot coverage shall include the area occupied by structures, dwellings, accessory structures, parking areas, driveways, patios and other impervious surfaces.

- B. Other conditions or stipulations may be required if deemed necessary by the Planning Commission to protect the surrounding properties and property values including but not limited to hours of operation, size of group, length of stay of a group, outside activities proposed, use of temporary structures, frequency of events, types of events and others as deemed appropriate by the Planning Commission.
- C. The rental of motorized recreation equipment such as snowmobiles, boats, personal watercraft, ATV or similar vehicles, in conjunction with the operation of the Group Retreat Center shall be prohibited. Privately owned or leased motorized recreation equipment will not be allowed to operate from the Group Retreat Center by a guest or an employee.
- D. The Group Retreat Center shall be required to be connected to public utilities, if available, or a County approved water and septic system.
- E. There shall be no Group Retreat Center allowed within twenty-five hundred (2,500) feet of an existing Group Retreat Center.
- F. Property owners within one thousand (1,000) feet of a proposed Group Retreat Center shall be notified by mail of an impending Group Retreat Center special exception use permit application public hearing.
- G. A fire escape plan shall be developed and graphically displayed in each guest room. Fire extinguishers and smoke detectors are to be displayed and maintained throughout the home per the Antrim County Building Department and the Elk Rapids Fire Department.

- H. The Zoning Administrator shall satisfactorily complete an initial on-site compliance inspection of the facility. Re-inspection shall be performed every third year. A compliance inspection fee shall be charged. The Township Board Fee Resolution Schedule shall determine the initial inspection fee and re-inspection fees.
- I. In December of each year, the owner of the property shall submit a report to the Zoning Administrator indicating the number and types of events held during the year.
- J. The Special Exception Use permit issued to the original applicant can be assigned to subsequent owners. In the event the property is sold and a new owner who proposes/intends to continue the operation of the Group Retreat Center, the seller shall notify the Zoning Administrator of the name, address and phone number of the new owner. The new owner shall be required to contact the Township for the purpose of reviewing the conditions and operational procedures associated with the original Special Exception approval or any amendments since the original approval.
- K. If a Group Retreat Center has lapsed in operation for more than nine (9) months, the Special Exception Use shall become void.

## **CHAPTER 8**

### **“R-2” - RESIDENTIAL - ONE-FAMILY AND TWO-FAMILY ZONE**

#### Section 8.01 - PERMITTED USES

No building or any part thereof in an R-2 Residential Zone shall hereafter be used, erected, altered or converted, or land used, in whole or in part, except for single and two-family dwelling units and for those uses otherwise permitted in the R-1 Residential Zone.

#### Section 8.02 - FURTHER PERMITTED USES

In addition to the uses permitted in Sections 8.01, the following uses may be allowed within the zone:

Nursing homes, convalescent homes and nursery schools upon approval as a special exception pursuant to Section 19.07.

#### Section 8.03 - SINGLE-FAMILY DWELLING UNIT HEIGHT, YARD, AND AREA RESTRICTIONS OF PLATTED LOTS

- A. Height - Same as in the R-1 Zone.
- B. Lot Dimensions - Every single-family lot in this zone shall have:
  - 1. An unoccupied front yard of at least fifty (50) feet.
  - 2. Two (2) side yards totaling at least twenty (20) feet; the minimum of each side yard shall be ten (10) feet.
  - 3. A rear yard of at least thirty-five (35) feet.
- C. Lot Area - Every lot shall have a minimum width at all points from front to back of at least one hundred fifty (150) feet and a minimum area of thirty thousand (30,000) square feet.
- D. The dwelling unit shall have a minimum usable floor area of nine hundred and sixty (960) square feet. The dwelling shall not be made up of additions of a dissimilar type or quality of construction or materials. No dimension shall be less than twenty (20) feet.
- E. The maximum lot coverage shall not exceed thirty (30) percent of the gross lot area. Lot coverage shall include the area occupied by structures, dwellings, accessory structures, parking areas, driveways, patios, decks and other impervious surfaces

Section 8.04 - TWO-FAMILY DWELLING UNIT HEIGHT, YARD, AND AREA RESTRICTIONS OF PLATTED LOTS

- A. Height - Same as R-I Zone.
- B. Lot Dimensions - Every lot to be used for two-family purposes in this zone shall have:
  - 1. An unoccupied front yard of at least fifty (50) feet.
  - 2. Two (2) side yards totaling at least twenty-five (25) feet; the minimum of one(1) side yard shall be ten (10) feet and the other side yard shall be fifteen (15) feet.
  - 3. A rear yard of at least thirty-five (35) feet.
- C. Lot Area - Every lot shall have a minimum width at the front yard setback line of at least one hundred fifty (150) feet and a minimum area of fifteen thousand (15,000) square feet per unit.
- D. Each dwelling unit shall have a minimum usable floor area of six hundred (600) square feet. The minimum width shall not be made up of additions of a dissimilar type or quality of construction or materials. No dimension shall be less than twenty (20) feet.
- E. The maximum lot coverage shall not exceed thirty (30) percent of the gross lot area. Lot coverage shall include the area occupied by structures, dwellings, accessory structures, parking areas, driveways, patios, decks and other impervious surfaces.

Section 8.05 - SINGLE-FAMILY DWELLING UNIT HEIGHT, YARD, AND AREA RESTRICTIONS FOR UNPLATTED LOTS

Except as provided in this Section, the height, area, and yard restrictions for single-family unplatted lots shall be the same as contained in Section 8.03.

- A. Lot Area - All unplatted single-family lots within this zone shall have a minimum width at all points from front to back of one hundred fifty (150) feet and shall have a minimum lot area of thirty-five thousand (35,000) square feet.
- B. The dwelling unit shall have a minimum usable floor area of nine hundred and sixty (960) square feet. The dwelling shall not be made up of additions of a dissimilar type or quality of construction or materials. No dimension shall be less than twenty (20) feet.

Section 8.06 - TWO-FAMILY DWELLING UNIT HEIGHT, YARD, AND AREA RESTRICTIONS FOR UNPLATTED LOTS

Except as provided in this Section, the height, area and yard requirements for a two-family dwelling located on unplatted lots shall be the same as provided in Section 8.04.

- A. Lot Area - All unplatted lots upon which two-family dwellings shall be located shall have a minimum width at all points from front to back of one hundred fifty (150) feet and shall have a minimum lot area of seventeen thousand five hundred (17,500) square feet per unit.
- B. Each dwelling unit shall have a minimum usable floor area of six hundred (600) square feet. The dwelling shall not be made up of additions of a dissimilar type or quality of construction or materials. No dimension shall be less than twenty (20) feet.

#### Section 8.07 – GENERAL PROVISIONS

See Chapter 2, GENERAL PROVISIONS for supplemental requirements and height, area, and yard restrictions.

## CHAPTER 9

### "R-3" - MULTIPLE FAMILY APARTMENT ZONE

#### Section 9.01 - PERMITTED USES

No building or any part thereof in R-3 Multiple Family Apartment Zone shall hereafter be used, erected, altered, or converted, or land used, in whole or in part, except for multiple family apartments and for those uses otherwise permitted in the R-2 Residential Zone.

#### Section 9.02 - USE REGULATIONS

- A. Uses permitted within the R-3 Zone shall be subject to the same height, area, and width requirements set forth in the R-2 Zone.
- B. No multiple-family dwelling unit shall be constructed within this zone unless the Planning Commission has determined that the proposed use will not be injurious to the surrounding neighborhood and not contrary to the spirit and purpose of this Ordinance.

Any proposed use in this zone requires Site Plan review and shall be applied for under the provisions of Chapter 17.

- C. Height - Same as R-2 Zone.
- D. Lot area:
  - 1. An area of six thousand (6,000) square feet per dwelling unit.
  - 2. A minimum area of forty thousand (40,000) square feet with a minimum width at all points from front to back of one hundred fifty (150) feet.
  - 3. Not more than thirty-five (35) percent of the area may be covered by buildings located thereon.
- E. The average usable floor space per dwelling unit per building shall be at least six hundred (600) square feet. The dwelling shall not be made up of additions of a dissimilar type or quality of construction or materials. No dimension shall be less than twenty (20) feet.
- F. Staging of Development - If the development is to be carried out in stages, each stage shall be constructed in the order as designated on the development plan as approved.
- G. Utilities - Before any plan submitted under this Section is approved, the applicant shall submit proof, satisfactory to the Planning Commission that the development has adequate public water and sanitary sewage service or in lieu thereof submit plans



approved by the appropriate state and local agency for alternate sources of water and sewage service.

- H. Plan Termination and Reinstatement - Any plan which has been approved and has not been implemented by commencement of construction within one (1) year after approval shall be automatically revoked. Reinstatement of the plan shall follow the procedure of Section 9.02.

#### Section 9.03 – GENERAL PROVISIONS

See Chapter 2, GENERAL PROVISIONS for supplemental requirements and height, area, and yard restrictions.

## CHAPTER 10

### “E” - ENVIRONMENTAL ZONE

#### Section 10.01 - PURPOSE

The purpose of this District is to allow single-family homes while preserving and protecting significant natural features including wetlands, lakes, rivers, streams, watersheds and other sensitive environmental features within Elk Rapids Township. These regulations seek to balance the protection of the ecosystem while enabling low-intensity development where appropriate. The regulations are designed to ensure adequate setbacks for buildings, structures and septic systems, ensure that building and structures are built on suitable and stable soils, prevent soil erosion in wetland areas, prevent sedimentation from entering the creeks, rivers and lakes, preserve and enhance vegetation and wildlife habitat along the creek and river banks.

#### Section 10.02 - PERMITTED USES

No use shall hereafter be permitted within the Environmental Zone except the following:

A. Single Family Detached Dwellings - subject to the following provisions:

1. Upon application for a zoning compliance permit, it shall be the responsibility of the applicant to provide documentation of any regulated wetlands on site as defined by Part 303 (Wetlands Protection) of the Natural Resources and Environmental Protection Act, 1994 PA 451. The documentation shall be certified by a qualified consultant or licensed engineer and shall determine all, if any, wetlands. If said consultant or licensed engineer certifies that the site does not include regulated wetlands, only a standard plot plan will be required.
2. If the site does contain regulated wetlands, a plot plan containing the following information presented on a scale drawing shall be submitted with the building permit application:
  - a. Location of existing property lines, dimensions, setback lines and monument locations.
  - b. Location and type of existing vegetation, and how it will be altered to permit construction of the project.
  - c. Location and elevations of existing water courses and water bodies, including county drains, man-made surface drainage ways, floodplain and wetlands (as identified by the DEQ in an official determination request).

- d. Location of existing and proposed buildings and intended use thereof as well as the length, width and height of each building, and typical elevation views of proposed structures.
  - e. Location of existing public roads, rights-of-way and private easements of record and abutting streets.
  - f. Location and specifications for all fences, walls and other screening features with cross sections.
  - g. Location and specifications for all proposed perimeter and internal landscaping and other buffering features. All vegetation to be retained on the site must also be indicated. The minimum vegetation buffer area as required by Section 10.05 hereof, shall also be identified and illustrated.
  - h. Seal of the registered engineer, architect, landscape architect, surveyor, or planner who prepared the plan.
- B. Construction of or provision of footpaths or narrow walkways - The cutting of vegetation shall be minimized for the purpose intended and no materials used in such construction shall contribute to the pollution/contamination of the ground water or adjoining lakes and rivers.
  - C. General farming purposes and grazing of domestic farm animals.
  - D. Harvesting of wild crops such as wild hay, ferns, moss, wild rice, berries, tree fruit and tree seeds.
  - E. Harvesting of timber in accordance with approved conservation practices.
  - F. Accessory Structures, with the additional criteria of Section 10.02, A, 1 and 2 to be applied. (Refer to Section 1.03, Accessory Structures).

### Section 10.03 - HEIGHT, AREA AND YARD RESTRICTIONS

- A. Required Yard Setbacks:
  - 1. Front Yard - Fifty (50) feet.
  - 2. Rear Yard - Thirty Five (35) feet.
  - 3. Side Yard - Two (2) side yards totaling twenty (20) feet; the minimum of each side yard shall be ten (10) feet.
- B. Building Height - No building or structure shall exceed a height of two and one-half (2 ½) stories or thirty-five (35) feet, whichever is less.

- C. Lot Width - A minimum of one hundred (100) feet at all points from front to back.
- D. Lot Area - All lots shall contain a minimum of 20,000 square feet.
- E. Dwelling Area - All dwellings shall have a minimum of nine hundred sixty (960) square feet. No dimension shall be less than twenty (20) feet as provided in Section 1.03, Dwelling Single Family, subsection 2.
- F. The maximum lot coverage shall not exceed thirty (30) percent of the gross lot area. Lot coverage shall include the area occupied by structures, dwellings, accessory structures, parking areas, driveways, patios, decks and other impervious surfaces.

#### Section 10.04 – SHORELAND PROTECTION ZONE

Certain lands in the Township abut Lake Michigan and have been designated as “high risk” erosion areas under the Shoreland Protection Act. Any construction within these designated areas which are included within the Environmental Zone shall comply with the rules and regulations adopted under the Shoreland Protection Act.

#### Section 10.05 – GENERAL REQUIREMENTS

- A. Wetlands - An applicant planning to make any improvements or changes to a regulated wetland must obtain a permit from the DEQ in accordance with Part 303 (Wetlands Protection) of the Natural Resources and Environmental Protection Act, 1994 PA 451 prior to submitting a site plan or land use permit application under this Zoning Ordinance.
- B. A Buffer Area, as defined herein, of at least twenty five (25) feet shall exist along the edge of all regulated wetlands on the lot or parcel. No ponds shall be constructed, earth moved, topsoil removed, or building within the Buffer Area.
- C. The Buffer Area shall consist of native trees, shrubs, and other vegetation and materials. Dead, diseased, unsafe or fallen trees and noxious plants and shrubs, including poison ivy, poison sumac and poison oak, may be removed. Healthy vegetation within the buffer area shall be left in a natural state, but may be selectively trimmed and thinned to provide a filtered view of lakes or streams.

#### Section 10.06 – GENERAL PROVISIONS

See Chapter 2, GENERAL PROVISIONS for supplemental requirements and height, area, and yard restrictions.

## CHAPTER 11

### "C" COMMERCIAL ZONE

#### Section 11.01 - DESCRIPTION AND PURPOSE

This Zone is intended to provide areas dedicated primarily to retail business, professional, and service establishments which supply commodities and perform services to meet the daily needs of the community. The Zone is also intended to provide locations for businesses which depend upon or in some way are related to the use of lakes and rivers.

#### Section 11.02 - PERMITTED USES

No building or any part thereof in a Commercial Zone shall hereafter be used, erected, altered, or converted, or land used, in whole or in part, except the following:

- Antique store
- Automotive accessories
- Baked goods or pastry store
- Bank
- Barber, beauty or grooming shop
- Book, stationery or gift store
- Bowling alley
- Candy store, soda fountain, ice cream store
- Clothing and dry goods store
- Decorators shop
- Delicatessen store
- Dress shop
- Drugstore
- Electrical supply store
- Fast service restaurant
- Florist
- Fruit stand (enclosed)
- Furniture store
- Grocery store and/or meat market
- Hardware store
- Hotel/motel (excluding waterfront property)
- Household appliance store
- Ice vending machine
- Jewelry store
- Museum
- Nursery school
- Office (business or professional) - including medical
- Paint and/or wallpaper store
- Parking lots
- Photographers
- Radio, television and/or video store

Restaurants and cafes (excluding those permitting dancing, floor shows, and the consumption of intoxicating beverages unless otherwise approved by the Township Board).

Self-serve laundry

Service stations (including minor automobile repairs)

Shoe repair shop

Tailor

Variety store, including notions

Veterinary clinics (with no boarding facilities)

Other similar retail business or service establishments which supply convenience commodities or perform services primarily for residents of surrounding neighborhood, provided, however, such uses shall be found to be similar by the Planning Commission.

#### Section 11.03 - REQUIRED CONDITIONS

The use of property in this Zone shall be subject to the following conditions:

- A. All business, service, or processing shall be conducted wholly within a completely enclosed building, except automobile service stations.
- B. All products produced on the premises, whether primary or incidental, shall be sold only at retail and on the premises where produced, except that the same products may be sold at wholesale upon approval as a special exception by the Planning Commission as provided in Section 19.07.
- C. Off street parking shall be provided in accordance with Chapter 14 and at the ratio of two (2) square feet of total parking space for each square foot of floor area. Off street loading and unloading space shall be provided as required under Chapter 14.
- D. Site Plan Review is required and shall be applied for under provisions of Chapter 17.

#### Section 11.04 - HEIGHT, AREA, AND YARD RESTRICTIONS

- A. No building shall exceed a maximum of two and one-half (2 ½) stories or thirty-five (35) feet in height, whichever is the lesser.
- B. Each commercial building shall have a front yard of at least fifty (50) feet, provided that where an existing lesser setback line has been established by existing commercial buildings occupying forty (40) percent or more of the commercially-zoned frontage on the same block, said setback shall apply.
- C. No side yard shall be required for a commercial building, except that where a side yard adjoins a Residential or Agricultural Zone or a side street, a minimum ten (10) foot greenbelt side yard shall be required, unless a lesser side yard has been established by existing commercial buildings occupying forty (40) percent or more of the commercially-zoned frontage within the same block along the side street in which case the greenbelt shall conform to the established setback.

- D. Where the rear of a lot in a Commercial Zone abuts upon a lot in a Residential or Agricultural Zone, there shall be a rear yard of not less than twenty-five (25) feet including a greenbelt.
- E. The Planning Commission may modify any greenbelt requirement of this section as not applicable to particular development circumstances and providing that such modification does not detract from the aesthetics or quality of the natural environment of the Township and if the Planning Commission finds that there would be no adverse effects resulting from the modification. It is the responsibility of the applicant to show cause how the modification meets the above standards.

Section 11.05 - USES PERMITTED BY SPECIAL USE PERMIT (SPECIAL EXCEPTION) TO COMMERCIAL ZONE

Uses permitted when authorized by special use permit (special exception). The following use of land and structures may be permitted by application to the Planning Commission for the issuance of a special use permit (special exception Chapter 19, Section 19.07) when specified procedures and requirements, as outlined in this section and Chapter 19 are complied with:

- A. Open Space Storage - Provided that all such open space storage shall be screened on all sides by a solid uniformly finished and maintained wooded or masonry wall or fence of durable material, or a well maintained greenbelt, each of which shall be no less in height than that of the enclosed storage. The Planning Commission may modify any greenbelt requirement of this section as not applicable to particular development circumstances and providing that such modification does not detract from the aesthetics or quality of the natural environment of the Township and if the Planning Commission finds that there would be no adverse effects resulting from the modification. It is the responsibility of the applicant to show cause how the modification meets the above standards.
- B. Outside Sales and Displays
- C. Mini-Storage - Provided they comply with the following standards:
  - 1. Locations - Location on a State Highway or County Primary Route.
  - 2. Lot Coverage & Lot Minimum Width - The parcel of property upon which the facility is proposed shall have no more than 60 percent of the lot area covered by buildings and be a minimum of 150 feet (150') wide at the front yard setback line.
  - 3. Buffering - Neighboring properties shall be buffered from the mini-storage facility. The buffering shall be accomplished by one or more of the following as deemed necessary by the Planning Commission to secure the objectives

of this section and the general purpose and intent of this ordinance:

- a. Solid board fences with wood posts must not be less than four inches by four inches (4" x 4") and solid board cover not less than one inch (1") thick. Masonry piers may be substituted for wood posts. Post or piers shall be spaced not more than eight feet (8') on center. The finished side of the wood shall face abutting properties.
  - b. Wrought iron, open mesh or slatted fencing, must not exceed the ratio of one part open to six-parts of solid fencing.
  - c. Masonry walls must be designed and constructed to facilitate maintenance and not to modify natural drainage in such a way as to endanger adjacent property. The outer face of such wall (the face away from the use, which is to be screened) must be made of clay, brick, stone, embossed or pierced concrete block, or other decorative masonry material. Fences containing barbed wire, electric charges or sharp materials are prohibited.
4. Screening - Shall be include to insure that neighboring properties are unable to view the structures, associated security fencing, and exterior lighting. A vegetative planting shall be established and maintained, outside the fencing in such a manner as to blend in with the surrounding area. The vegetative planting shall consist of a mixture of coniferous trees of differing types.
5. Building Design and Construction Standards - To assist in insuring that any buildings constructed for mini-storage are not used for other than the permitted purpose, no structures shall be permitted which exceed the following dimensions, including eaves:
- a. No building shall exceed thirty-two feet (32') in width by one hundred fifty two feet (152') in length.
  - b. No building shall exceed twenty feet (20') in height.
  - c. No exterior walk in or garage door shall exceed seven and one half feet (7½') in height. All garage doors shall open overhead and none shall exceed nine feet (9') in width.
  - d. On a rectangular building, the height of the plate on top of the walls on the two sides of the building having the longest walls (measured horizontally) shall not exceed nine feet (9') in height above floor level. For structures having a shape other than a rectangular, the Planning Commission shall determine which wall or walls shall comply with the nine foot height, taking into consideration the intent of minimize the height of the walls.



- e. The roof pitch shall not exceed a dimension greater than four inches (4") of vertical rise to every twelve inches (12") of horizontal run.
  - f. No side of any building containing doorways to the storage areas shall be located within twenty-five feet (25') of a property line or road right-of-way.
  - g. All lights shall be shielded to direct light onto the uses established and away from adjacent property, but it may be of sufficient intensity to discourage vandalism and theft.
6. Use and Operational Standards - To insure that all mini-storage units blend in with other uses in this zone, the following operational standards shall be met during the life of this use:
- a. All items stored on the property shall be located within buildings.
  - b. Garage sales and similar activities are prohibited.
  - c. The servicing or repair of motor vehicles, boats, trailers, lawn mowers and other similar equipment shall not be conducted on the premises.
  - d. No hazardous or flammable materials may be stored in any of the mini-storage units.
  - e. The area shall be properly policed by the owner or operator for removal of trash and debris.
  - f. The operation of such a facility shall in no way be deemed to include a transfer and storage business where the use of vehicles is part of such business.
  - g. If a portion of the building is to be used for office space, parking requirements are subject to Chapter 14 of the Township Zoning Ordinance.
7. Site Plan Review - Mini-Storage facilities are subject to Site Plan Review (Chapter 17).
8. The Planning Commission may modify any buffer and/or greenbelt requirement of this section as not applicable to particular development circumstances and providing that such modification does not detract from the aesthetics or quality of the natural environment of the Township and if

the Planning Commission finds that there would be no adverse effects resulting from the modification. It is the responsibility of the applicant to show cause how the modification meets the above standards.

#### Section 11.06 – GENERAL PROVISIONS

See Chapter 2, GENERAL PROVISIONS for supplemental requirements and height, area, and yard restrictions.

## CHAPTER 12

### **“M” - MANUFACTURING ZONE**

#### Section 12.01 - PERMITTED USES

Any area within the “M” Zone will be considered for such uses as light manufacturing or processing operations, warehouses, research and office buildings, subject to the following conditions:

- A. All operations shall be conducted within enclosed structures.
- B. Exterior yard storage shall be screened on sides and rear by a solid uniformly finished and maintained wooden or masonry wall or fence of durable material or a well maintained greenbelt, each of which shall be no less in height than the enclosed storage, loading activities or accessory structures or trucks except landscaping. The Planning Commission may modify this screening requirement as not applicable to particular development circumstances and providing that such modification does not detract from the aesthetics or quality of the natural environment of the Township and if the Planning Commission finds that there would be no adverse effects resulting from the modification. It is the responsibility of the applicant to show cause how the modification meets the above standards.
- C. No unusable or abandoned cars shall be stored in the open.
- D. All new structures permitted in this zone shall have a front yard of at least fifty (50) feet.
- E. No parking of vehicles will be allowed in front of the set back.
- F. The maximum height of buildings shall be thirty-five (35) feet or two and one-half (2 ½) stories.
- G. Off street parking, loading and unloading space shall be provided as required in Chapter 14.
- H. Site Plan Review is required and shall be applied for under provisions of Chapter 17.

#### Section 12.02 - OFFENSIVE AND HAZARDOUS EMISSIONS

No use shall discharge any produced dust, smoke, or odorous matter or toxic fumes; physical vibrations; or, heat or glare beyond the boundaries of the premises. No noise created from any use in the Manufacturing Zone shall be allowed that would cause a nuisance to an adjacent Residential Zone.

#### Section 12.03 - USE REGULATIONS

Any application under this Section shall be made to the Planning Commission as provided in Section 19.07 and accompanied by a development plan as required in Chapter 17

detailing the effects of the operations on traffic; on water and air pollution; on noise and glare conditions; on fire and safety hazards; on emission of dangerous or obnoxious matter; and on the proposed treatment of any such conditions to maintain the same within the limitations of the Ordinance. It shall show the plans for disposal of sewage and all industrial wastes. It shall specify the fuels to be used, including smoke and pollution control.

#### Section 12.04 - PERMITTED USES BY SPECIAL USE PERMIT (SPECIAL EXCEPTION)

Uses permitted when authorized by special use permit (special exception). The following use of land and structures may be permitted by the application to the Planning Commission for the issuance of a special use permit (special exception Chapter 19, Section 19.07) when specified procedures and requirements, as outlined in the article and section cited, are complied with:

Marine Repair Facility

#### Section 12.05 – GENERAL PROVISIONS

See Chapter 2, GENERAL PROVISIONS for supplemental requirements and height, area, and yard restrictions.

## CHAPTER 13

### “P-D” - PLANNED DEVELOPMENT ZONE

#### Section 13.01 - DESCRIPTION AND PURPOSE

A zone which shall be established only upon application by the owner of the property for non-ordinary uses such as, extraction of natural resources, outdoor theater, drive-in, race track, shopping center, industrial parks, convalescence and nursing homes, sanitary landfills, seasonal trailer parks, country clubs, golf clubs, golf courses, golf driving ranges, amusement parks, riding stables, mobile home parks, ski area, skeet, trap and archery ranges, and similar uses not otherwise authorized by this Ordinance and which may require special treatment with regard to screening or setbacks and side and rear yards or which may generate special traffic or other police problems. This zone shall also be available for areas where problems of terrain may require special treatment on matters of setback or side and rear yard or land area restrictions. Except as hereinafter stated, the administrative provisions as stated in Section 19.06 D, F, and G shall apply.

#### Section 13.02 - USE REGULATIONS AND PROCEDURE

- A. The owner of any parcel of land which is situated in an area which is not substantially fully developed, or of fully developed land on which it is proposed to raze buildings and redevelop may make application to the Planning Commission for a change of zoning to the “P-D” Zone. Such application shall be made under the provisions of Chapter 17. The applicant must own all the land for which the application is made and the proposed development must be planned and developed as one cohesive development
- B. At any public meeting prior to rezoning, the Township Board may recommend to the Planning Commission that such regulations as said Township Board deems necessary to protect the general health, safety and public welfare of the residents of the Township, be imposed by said Planning Commission. The recommendations so made by said Township Board shall be predicated on the standards established in Chapter 17.
- C. The Planning Commission shall meet prior to the adoption by the Township Board of the rezoning and shall determine which of the recommendations made by the Planning Commission and the Township Board, under Chapter 17, shall be required and may make any other reasonable requirements which it deems advisable under the particular circumstances involved to protect the public health, safety and general welfare. In making its determination, the Planning Commission shall make other considerations necessary to insure:
  - 1. Consistency with and promote the intent and purpose of the Ordinance.

2. That the P-D authorized will be compatible with adjacent use of land, the natural environment and the capacities of public services and facilities effected by the use; and
3. Consistency with the public health, safety and welfare of the Township.

The Planning Commission or Township Board decision of approval or disapproval of application shall not be appealable to the Zoning Board of Appeals.

#### Section 13.03 - TIME LIMIT ON CONSTRUCTION, REVERSION AND REZONING TO FORMER CLASSIFICATION

Every application for P-D together with all recommendations made under Chapter 17, when approved by the Planning Commission and adopted by the Township Board, either as submitted or resubmitted in modified form shall constitute a binding agreement by the applicant that the use permitted under this Chapter shall be made, completed and operated as shown on the development plan as part of the project in accordance with the provisions of this Chapter and that the area which has been zoned P-D shall lose that status and revert to and be resumed to its former zoning classification upon the happening of the following:

If the construction of the approved buildings and improvements shall not be undertaken within one (1) year of the rezoning or within such additional time extension as may be authorized by the Planning Commission.

#### Section 13.04 – GENERAL PROVISIONS

See Chapter 2, GENERAL PROVISIONS for supplemental requirements and height, area, and yard restrictions.

## **CHAPTER 14**

### **OFFSTREET PARKING AND LOADING**

#### **Section 14.01 - REQUIREMENTS FOR PARKING AREAS**

- A. Each off street parking space per vehicle shall have an area of not less than two hundred (200) square feet, exclusive of access drives or aisles, and shall be a minimum of ten (10) feet in width.
- B. All driveways and parking areas shall have surfaces consisting of gravel, asphalt or portland cement binder and so graded and drained to dispose of all surface water accumulated within the area.
- C. If the parking area adjoins a residential zone, a greenbelt shall be provided and maintained between the parking area and the adjoining residential zone. The Planning Commission may modify any greenbelt requirement of this section as not applicable to particular development circumstances and providing that such modification does not detract from the aesthetics or quality of the natural environment of the Township and if the Planning Commission finds that there would be no adverse effects resulting from the modification. It is the responsibility of the applicant to show cause how the modification meets the above standards.

#### **Section 14.02 - PARKING AREA DEFINED**

Parking areas shall include access drives within the actual parking area and shall be located on the same tract of land with the building.

#### **Section 14.03 - RESIDENTIAL OFF-STREET PARKING**

- A. Single-family and two-family dwellings. Two (2) parking spaces located behind the building setback line shall be provided for each dwelling unit.
- B. Multiple-family dwellings. Two (2) off street parking spaces shall be provided for each dwelling unit.

#### **Section 14.04 - NON-RESIDENTIAL PARKING**

- A. For all uses permitted in the Commercial or Manufacturing Zones, off street parking shall be provided as shown in Section 14.06.
- B. All places of public assembly including but not limited to theaters and churches shall provide a minimum of one (1) parking space for each four (4) seats.

- C. In the case of mixed uses occupying the same building or structure, the total requirements for off street parking areas shall be the sum of the requirements of the various uses when occurring at simultaneous periods of usage.

#### Section 14.05 - REQUIRED OFF-STREET LOADING AND UNLOADING SPACE

In all zones, unless otherwise provided as a condition to the granting of a variance or special exception, every building or part thereof occupied for a use requiring the receipt or distribution of vehicles, materials, or merchandise, shall provide and maintain on the same premises with such building off street loading space as follows: One (1) space for each twenty thousand (20,000) square feet of floor area of building, provided that, each loading space shall be at least ten (10) feet in width, twenty-five (25) feet in length, and fourteen (14) feet in height. No off street loading space shall be located closer than fifty (50) feet to any lot of any residential area unless wholly within a completely enclosed building or enclosed on all sides by a solid wall not less than six (6) feet in height. All such off street loading space shall be located to the side or rear of any building.

#### Section 14.06 - NON-RESIDENT PARKING CHART

PARKING TO GROSS FLOOR AREA RATIO      ONE SPACE PER

TYPE OF USE	3:1	2:1	1:1	Emp.	OTHER
Auto Repair Shop				X	
Banks & Business Offices		X			
Bar, Cocktail Lounge, Restaurant	X				
Barber and Beauty Shop	X				
Bowling Alley					7 spaces per alley
Exhibition Hall w/o <u>fixed seats</u>	X				
Manufacturer		X			
Motel				X	1 per unit
Nursing Homes				X	1 per bed
Offices, General		X			
Offices, Medical	X				
Retail, General		X			
Retail, Special(1)		X			
Shopping Center Neighborhood	X				
Shopping Center Regional		X			2:1 gross leasable
Schools, Elementary/Junior High				X	
Schools, High School				X	Plus 1 per each 6 students
Swimming Pool					1 per 30 sq ft of water

Furniture and appliance sales and service, showrooms for plumbing, electrical, repair services, cleaning and laundry, motor vehicle sales.



#### Section 14.07 - PARKING WAIVER

The Planning Commission may allow for an approved use to commence with a minimum of 75% of the parking required by this ordinance being provided. The Planning Commission shall require that an area sufficient to provide for 100% of the required parking be designated on the approved site plan. The Planning Commission may require a bond, cash deposit or allow for another method of guaranteeing the additional parking spaces shall be constructed should the Commission determine at a later date to provide adequate parking for the use occurring on the property.

The Planning Commission may require sidewalks, walkways, and bicycle paths to be installed at the property owner's expense to provide for means of accessing the uses occurring on the particular parcel of property from neighboring properties and other locations within the township.

## CHAPTER 15

### WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS

“WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS”; PROVIDING DEFINITIONS; PROVIDING FOR PERMITTED LOCATIONS; PROVIDING CONDITIONS FOR PERMITTED USES, ACCESSORY USES, AND SPECIAL USES; PROVIDING FOR PERMITS AND LEASE AGREEMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Township of Elk Rapids has received or expects to receive requests to site wireless communications towers and antennas within the municipal boundaries; and

WHEREAS, the Township of Elk Rapids finds that it is in the public interest to permit the siting of wireless communications towers and antennas within the municipal boundaries; and

WHEREAS, it is the intent of the Township of Elk Rapids to permit the siting of wireless communications towers and antennas within the municipal boundaries; and

WHEREAS, it is the intent of the Township of Elk Rapids to protect and promote the public health, safety and welfare by regulating the siting of wireless communications towers and antennas,

NOW, THEREFORE, BE IT ORDAINED BY THE ELK RAPIDS TOWNSHIP BOARD:

#### Section 15.01 - INTENT & PURPOSE

The purpose of this ordinance is to establish general guidelines for the siting of wireless communications towers and antennas. The goals of this ordinance are to:

- A. Protect residential areas and land uses from potential adverse impacts of towers and antennas.
- B. Encourage the location of towers in non-residential areas.
- C. Minimize the total number of towers throughout the community.
- D. Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers.
- E. Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal.
- F. 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.

- G. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently.
- H. Consider the public health and safety of communication towers.
- I. Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

In furtherance of these goals, Elk Rapids Township shall give due consideration to the Elk Rapids Township master plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

#### Section 15.02 - DEFINITIONS

As used in this ordinance, the following terms shall have the meanings set forth below:

- A. Alternative Tower Structure - Means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.
- B. Antenna - Means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.
- C. Backhaul Network - Means 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.
- D. FAA - Means the Federal Aviation Administration.
- E. FCC - Means the Federal Communications Commission.
- F. Height - Means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.
- G. Preexisting Towers and Preexisting Antennas - Means 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, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.
- H. Tower - Means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed 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.

#### Section 15.03 - APPLICABILITY

- A. New Towers and Antennas - All new towers or antennas in Elk Rapids Township shall be subject to these regulations, except as provided in Sections 15.03 (B) through (D), inclusive.
- B. Amateur Radio Station Operators/Receive Only Antennas -This ordinance shall not govern any tower, or the installation of any antenna, that is under thirty five (35) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas.
- C. Pre-existing Towers or Antennas - Preexisting towers and preexisting antennas shall not be required to meet the requirements of this ordinance, other than the requirements of Sections 15.04 (F) and 15.04 (G).
- D. AM Array - For purposes of implementing this ordinance, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

#### Section 15.04 - GENERAL REQUIREMENTS

- A. Principal or Accessory Use - Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.
- B. Lot Size - For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.
- C. Inventory of Existing Sites - Each applicant for an antenna and/or tower shall provide to the Zoning Administrator an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of Elk Rapids Township or within one mile of the border thereof, including specific information about the location, height, and design of each tower. The Zoning Administrator may share such information with other applicants applying for administrative approvals or special use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of Elk Rapids Township provided, however that the Zoning Administrator is not, by sharing such

information, in any way representing or warranting that such sites are available or suitable.

D. Aesthetics - Towers and antennas shall meet the following requirements:

1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standard of the FAA, be painted a neutral color so as to reduce visual obtrusiveness. A monopole design is preferred and the design and appearance of the support structure and all accessory buildings shall be reviewed and approved so as to minimize distraction, reduce visibility from off site, maximize aesthetic appearance including at and from ground level, and ensure compatibility with surroundings.
2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding building.
3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

E. Lighting - Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

F. State or Federal Requirements - All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

G. Building Codes; Safety Standards - To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Township of Elk Rapids concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower,

the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

- H. Measurement - For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in Elk Rapids Township irrespective of municipal and county jurisdictional boundaries.
- I. Not Essential Services - Towers and antennas shall be regulated and permitted pursuant to this ordinance and shall not be regulated or permitted as essential services, public utilities, or private utilities.
- J. Franchises - Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in Elk Rapids Township have been obtained and shall file a copy of all required franchises with the Zoning Administrator.
- K. Public Notice - For purposes of this ordinance, any special use request, variance request, or appeal of an administratively approved use or special use shall require public notice to all abutting property owners and all property owners of properties that are located within the corresponding separation distance listed in Section 15.06(B)(5)(b), Table 2, in addition to any notice otherwise required by the Zoning Ordinance.
- L. Signs - No signs shall be allowed on an antenna or tower.
- M. Buildings and Support Equipment - Buildings and support equipment associated with antennas or towers shall comply with the requirements of Section 15.07.
- N. Multiple Antenna/Tower Plan - Elk Rapids Township encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

#### Section 15.05 - PERMITTED USES

- A. General - The uses listed in this Section are deemed to be permitted uses and shall not require a special use permit.
- B. Permitted Uses - The following uses are specifically permitted:

Antennas or towers located on property owned, leased, or otherwise controlled by Elk Rapids Township provided a license or lease authorizing such antenna or tower has been approved by Elk Rapids Township.

## Section 15.06 - SPECIAL USE PERMITS

### A. General - The following provisions shall govern the issuance of special use permits for towers or antennas by the Planning Commission:

1. If the tower or antenna is not a permitted use under Section 15.05 of this ordinance, then a special use permit shall be required for the construction of a tower or the placement of an antenna in all zoning districts.
2. Applications for special use permits under this Section shall be subject to the procedures and requirements of Chapter 19 [Chapter on special uses] of the Zoning Ordinance, except as modified in this Section.
3. In granting a special use permit, the Planning Commission may impose conditions to the extent the Planning Commission concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.
4. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
5. An applicant for a special use permit shall submit the information described in this Section and a non-refundable fee as established by the Elk Rapids Township Board, as well as any additional fees which may be required should outside professional assistance be required in the review of the application, to reimburse Elk Rapids Township for the costs of reviewing the application.

### B. Towers

1. Information Required - In addition to any information required for applications for special use permits pursuant to Chapter 19 [Chapter on special uses] of the Zoning Ordinance, applicants for a special use permit for a tower shall submit the following information:
  - a. A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), Master Plan classification of the site and all properties within the applicable separation distances set forth in Section 15.06(B)(4), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by the Zoning Administrator to be necessary to assess compliance with this ordinance.

- b. Legal description of the parent tract and leased parcel (if applicable).
  - c. The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.
  - d. The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 15.04(C) shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
  - e. A landscape plan showing specific landscape materials.
  - f. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.
  - g. A description of compliance with Sections 15.04(C), (D), (E), (F), (G), (J), (L), and (M), 15.06(B)(4), 15.06(B)(5) and all applicable federal, state or local laws.
  - h. A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.
  - i. Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.
  - j. A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
  - k. A description of the feasible location(s) of future towers or antennas within the Township of Elk Rapids based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
2. Factors Considered in Granting Special Use Permits for Towers - In addition to any standards for consideration of special use permit applications pursuant to Chapter 19 [Chapter on special uses] of the Zoning Ordinance, the Planning Commission shall consider the following factors in determining whether to issue a special use permit, although the Planning Commission may waive or reduce the burden on the applicant of one or more of these criteria if the Planning Commission concludes that the goals of this ordinance are better served thereby:



- a. Height of the proposed tower.
  - b. Proximity of the tower to residential structures and residential district boundaries.
  - c. Nature of uses on adjacent and nearby properties.
  - d. Surrounding topography.
  - e. Surrounding tree coverage and foliage.
  - f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
  - g. Proposed ingress and egress.
  - h. Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in Section 15.06(B)(3) of this ordinance.
3. Availability of Suitable Existing Towers, Other Structures, or Alternative Technology - No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning Commission that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's a proposed antenna. An applicant shall submit information requested by the Planning Commission related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
- a. No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.
  - b. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
  - c. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
  - d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna

- e. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
  - f. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
  - g. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.
4. Setbacks - The following setback requirements shall apply to all towers for which a special use permit is required; provided, however, that the Planning Commission may reduce the standard setback requirements if the goals of this ordinance would be better served thereby:
- a. Towers must be set back a distance equal to at least seventy-five percent (75%) of the height of the tower from any adjoining lot line.
  - b. Guys and accessory buildings must satisfy the minimum zoning district setback requirements.
5. Separation - The following separation requirements shall apply to all towers and antennas for which a special use permit is required; provided, however, that the Planning Commission may reduce the standard separation requirements if the goals of this ordinance would be better served thereby.
- a. Separation from off-site uses/designated areas.
    - (1) Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 1, except as otherwise provided in Table 1.
    - (2) Separation requirements for towers shall comply with the minimum standards established in Table 1.

**Table 1:**

Off-site Use/Designated Area	Separation Distance
Single-family or duplex residential units <sup>1</sup>	200 feet or 300% height of tower whichever is greater
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired	200 feet or 300% height of tower <sup>2</sup> whichever is greater
Vacant unplatted residentially zoned lands <sup>3</sup>	100 feet or 100% height of tower whichever is greater
Existing multi-family residential units greater than duplex units	100 feet or 100% height of tower whichever is greater
Non-residentially zoned lands or non-residential uses	None; only setbacks apply

<sup>1</sup>Includes modular homes and mobile homes used for living purposes.

<sup>2</sup>Separation measured from base of tower to closest building setback line.

<sup>3</sup>Includes any unplatted residential use properties without a valid preliminary subdivision plan or valid development plan approval and any multi-family residentially zoned land greater than duplex.

- b. Separation Distances Between Towers - Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 2.

**Table 2:**

Existing Towers – Types

	Lattice	Guyed	Monopole 75 Ft in Height or Greater	Monopole Less Than 75 Ft in Height
Lattice	5000	5000	1,500	750
Guyed	5000	5000	1,500	750
Monopole 75 Ft in Height or Greater	1,500	1500	1,500	750
Monopole Less Than 75 Ft in Height	750	750	750	750

6. Security Fencing - Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the Planning Commission may waive such requirements, as it deems appropriate.
7. Landscaping - The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however, that the Planning Commission may waive such requirements if the goals of this ordinance would be better served thereby.
  - a. Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.
  - b. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.

- c. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

#### Section 15.07 - BUILDINGS OR OTHER EQUIPMENT STORAGE

Buildings or other equipment cabinet's accessory to an antenna or tower shall be unmanned. Buildings or other equipment cabinets shall not exceed the maximum height for accessory structures and shall be located in accordance with the minimum setback requirements for the zoning district in which it is located. Buildings or other equipment cabinets shall be screened from view from any nearby residential properties by an opaque evergreen hedge. The provisions of this subsection may be modified by the Planning Commission to encourage collocation.

#### Section 15.08 - REMOVAL OF ABANDONED ANTENNAS AND TOWERS

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the Township of Elk Rapids notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) day 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. A performance guarantee may be required in order to effectuate the terms and conditions of this ordinance.

#### Section 15.09 - NONCONFORMING USES

- A. Not 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. Preexisting towers - Preexisting 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 preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this ordinance.
- C. Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas - Notwithstanding Section 15.08, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a special use permit and without having to meet the separation requirements specified in Sections 15.06(B)(4) and 15.06(B)(5). The type, height, and location of the tower onsite shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from

the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in Section 15.08.

Section 15.10 - SEVERABILITY

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

## CHAPTER 16

### SEXUALLY ORIENTED BUSINESS – REGULATIONS AND REQUIREMENTS FOR OPERATION WITHIN A COMMERCIAL ZONE

#### Section 16.01 - PURPOSE

The purpose of this chapter is to regulate sexually oriented businesses and related activities to promote health, safety, morals, and general welfare of the citizens of Elk Rapids Township, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Township. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

#### Section 16.02 - FINDINGS AND RATIONALE

Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Elk Rapids Township Planning Commission and the Township Board, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Daytona Grand, Inc. v. City of Daytona Beach*, 2007 LEXIS 15361 (11<sup>th</sup> Cir. 2007; and *Déjà vu of Nashville, Inc. v. Metropolitan Gov't of Nashville and Davidson County*, 2006 WL 2882969 (6<sup>th</sup> Cir. 2006); *Sensations, Inc. V. City of Grand Rapids*, No. 1:06-cv-300, R.73, Opinion (W.D. Mich. Oct. 23, 2006); *729 Inc. v. Kenton County*, 2006 WL 2842884 (E.D. Ky. 2006); *Déjà vu of Cincinnati, L.L.C. v. Union Bd. of Trustees*, 411 F.3d 546 (5<sup>th</sup> Cir. 2006); *City of Chicago v. Pooh Bah Enterprises, Inc.*, 2006 WL 2827608 (Ill. 2006); *Sensations, Inc. v. City of Grand Rapids*, 2006 WL 2504388 (W.D. Mich. 2006); *Andy's Restaurant & Lounge, Inc. v. City of Gary*, 2006 WL 2873027 (7<sup>th</sup> Cir. 2006); *181 South, Inc. v. Fischere*, 454 F.3d 228 (3<sup>rd</sup> Cir. 2006); *Bronco's Entertainment, Ltd. V. Charter Twp. Of Van Buren*, 421 F.3d 440 (6<sup>th</sup> Cir. 2005); *Charter Twp. Of Van Buren v. Garter Belt, Inc.*, 258 Mich. App. 594 (2003); *Jott Inc. v. Clinton Twp.*, 224 Mich. App. 513 (1997); *Michigan ex rel. Wayne County Prosecutor v. Dizzy Duck*, 449 Mich. 353 (1995); *Z.J. Gifts D2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10<sup>th</sup> Cir. 1998); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8<sup>th</sup> Cir. 1994); *Kentucky Restaurant Concepts, Inc. v. City of Louisville*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *Restaurant Ventures v. Lexington-Fayette Urban County Gov't*, 60 S.W. 3d 572 (Ky. Ct. App. 2001; *Déjà vu of Nashville, Inc. et al. v. Metropolitan Government of Nashville and Davidson County*, 274 F. 3d 377 (6<sup>th</sup> Cir. 2001); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9<sup>th</sup> Cir. 2004);

*Ben's Bar, Inc. v. Township of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Ctr. For Fair Public Policy v. Maricopa County*, 336 F. 3d 1153 (9th Cir. 2003); *Bigg Wolf Discount Video Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Kentucky Restaurant Concepts, Inc. v. Metro Gov't*. Case No. 04-CI-01967 (Jefferson Circuit Court, Summary Judgment Order, Dec. 14, 2004); *DLS Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Brandywyne, Inc. v. City of Richmond*, 359 F.3d 830 (6th Cir. 2004); *Currence v. City of Cincinnati*, 28 Fed. Appx. 438 (6th Cir. Jan 24, 2002); *Broadway Books v. Roberts*, 642F. Supp. 486 (E.D. Tenn. 1986); *Bright Lights, Inc. v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *Richland Bookmart v. Nichols*, 137 F. 3d 435 (6th Cir. 1998); *Bamon Corp. v. City of Dayton*, 923 F. 2d 470 (6th Cir. 1991); *Triplett Grille, Inc. v. City of Akron*, 40 F. 3d 129 (6th Cir. 1994); *O'Connor v. City and County of Denver*, 894 F. 2d 1210 (10th Cir. 1990); *Threesome Entertainment v. Strittmather*, 4F. Supp. 2d 710 (N.D. Ohio 1998); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *In re Tennessee Public Indecency Statute*, 172 F.3d 873 (6th Cir. Jan. 13 1999);

And, based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Ellicottville, New York, 1998; Phoenix, Arizona - 1979, 1995-98; Los Angeles, California - 1977; Whittier, California - 1978; New Hanover Co, North Carolina - 1989; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Amarillo, Texas - 1977; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota),

The Township Board Finds:

- A. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- B. Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
- C. Each of the foregoing negative secondary effects constitutes a harm which the Township has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the Township's rationale for this Chapter, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the Township's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the Township. The Township finds that the cases and documentation relied on in this Chapter are reasonably believed to be relevant to said secondary effects.



### Section 16.03 - DEFINITIONS

- A. Adult Arcade: Any place to which the public is permitted or invited wherein coin operated or slug operated or electronically, electrically, or motion picture machines, projectors, or other image producing devices are maintained to show images for any form of consideration to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of Specified Sexual Activities and Specified Anatomical Areas (as those terms are defined elsewhere herein).
- B. Adult Bookstore or Adult Video Store: A commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of Specified Sexual Activities and Specified Anatomical Areas; or
  2. Instruments, devices, or paraphernalia which are designed for use in connection with Specified Sexual Activities.
  3. A "principal business purpose" exists where:
    - a. at least 25% of the establishment's displayed merchandise consists of said items, or
    - b. at least 25% of the wholesale value of the establishment's displayed merchandise is in said items, or
    - c. at least 25% of the fair market value of the establishment's displayed merchandise is in said items, or
    - d. at least 25% of the establishment's gross revenues derive from the sale or rental, for any form of consideration, of said items, or
    - e. at least 25% of the establishment's interior business space or, if less than 25%, at least five hundred square feet (500 sq. ft.) of the establishment's interior business space, is maintained for the display, sale, and/or rental of the foregoing items (aisles and walkways used to access said items shall be included in "interior business space" maintained for the display, sale, and/or rental of said items); or
    - f. the establishment offers for sale or rental at least two thousand five hundred (2,500) of the foregoing items; or
    - g. the establishment regularly features said items and regularly advertises itself or holds itself out as an establishment that caters to adult sexual interests by using "adult," "XXX," "sex," "erotic," or substantially similar language.

- C. Adult Cabaret: A nightclub, bar, restaurant, or similar commercial establishment which regularly features:
1. Persons who appear in a state of semi-nudity or nudity; or
  2. Live performances which are characterized by exposure of Specified Sexual Activities and Specified Anatomical Areas; or
  3. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities and Specified Anatomical Areas.
- D. Adult Motel: A hotel, motel or similar commercial establishment which:
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, or other photographic reproductions which 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 which advertises the availability of this adult type of photographic reproductions; or
  2. Offers a sleeping room for rent or sub-rent for a period of time that is less than twelve (12) hours.
- E. Adult Motion Picture Theater: Commercial establishments where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of Specified Anatomical Areas or Specified Sexual Activities are regularly shown.
- F. Adult Theater: A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of Specified Anatomical Areas and by Specified Sexual Activities.
- G. Characterized by: Means describing the essential character or quality of an item. As applied in this Section, no business shall be classified as a Sexually Oriented Business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.
- H. Escort Agency: A 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.
- I. Escort: A person who, for consideration, agrees or offers to act as a companion or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- J. Establishment: Means and includes any of the following:
1. The opening or commencement of any Sexually Oriented Business;
  2. The conversion of an existing business, whether or not a Sexually Oriented Business, to any Sexually Oriented Business;

3. The addition of any Sexually Oriented Business to any other existing Sexually Oriented Business; or
  4. The relocation of any Sexually Oriented Business.
- K. Family Child Care Center or Group Child Care Center: A licensed facility, other than a private home, receiving more than six pre-school or school age children for group care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. It includes a facility which provides care for not less than two consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative pre-school, play group or drop-in center.
- L. Nude Model Studio: Any place where a person who displays Specific Anatomical Areas is provided to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration.
- M. Nudity or State of Nudity: The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernible turgid state even if completely and opaquely covered.
- N. Person: An individual, proprietorship, partnership, corporation, association or other legal entity.
- O. Public Park: A recreational area which has been designated for park or recreational activities, including but not limited, to a park, playground, nature trail, athletic field, basketball or tennis court pedestrian/bicycle path, wilderness area, or other similar public land within the Elk Rapids Township or the Village of Elk Rapids.
- P. Semi-Nude: The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed in whole or in part.
- Q. Sexual Encounter Center: A business or commercial enterprise that, as one of its principal business purposes, offers for any consideration for Specified Sexual Activities.
- R. Sexually Oriented Businesses: Includes but is not limited to: adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.
- S. Specified Anatomical Area: The male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

- T. Specified Sexual Activities: Includes any of the following:
1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
  2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, bestiality 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.

#### Section 16.04 - PERMIT REQUIRED

- A. A Sexually Oriented Business is only permitted in the Commercial Zone as a Special Exception Use. It shall be unlawful for a person to operate a Sexually Oriented Business in a Commercial Zone without a Special Exception Use permit approved by the Elk Rapids Township Planning Commission and a valid Sexually Oriented Business License issued by the Township Clerk in accordance with the requirements of Ordinance No. 1-2010, Elk Rapids Township. The fact that a person possesses other types of state or county permits and/or licenses does not exempt the person from the requirement of obtaining a Special Exception Use permit and Sexually Oriented Business License from Elk Rapids Township.
- B. An application for a Special Exception Use permit shall be made on a form provided by Elk Rapids Township and, in addition to the requirements established in this chapter, shall meet the requirements of Section 19.07 of the Zoning Ordinance.
- C. All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information as to enable Elk Rapids Township to determine whether the applicant meets the qualifications established in this chapter.
- D. All applications shall include a statement that:
1. The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and
  2. The applicant has read the provisions of this chapter.

#### Section 16.05 - PLANNING COMMISSION REVIEW AND HEARING

The Elk Rapids Planning Commission shall review the application and conduct a public hearing in accordance with the requirements of this chapter and Section 19.07 – Special Exceptions.

#### Section 16.06 - ISSUANCE OR NON-ISSUANCE OF SPECIAL EXCEPTION USE PERMIT

- A. A Special Exception Use Permit under this chapter shall not be approved by the Elk Rapids Township Planning Commission if the applicant has failed to provide information reasonably necessary for the issuance of the permit or has falsely answered a question or request for information on the application form or required in this chapter.
- B. The decision of the Elk Rapids Township Planning Commission regarding approval, denial, or approval with conditions of the permit application shall be served upon the applicant in writing within fourteen (14) days of the date of the decision.
- C. Decisions of the Elk Rapids Township Planning Commission to approve, deny or approve with conditions a Special Exception Use permit may be appealed to the Circuit Court, pursuant to law.

#### Section 16.07 - LOCATION OF SEXUALLY ORIENTED BUSINESSES

- A. A Sexually Oriented Business may not be operated within 750 feet of:
  - 1. a church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
  - 2. a public or private educational facility including but not limited to nursery schools, preschools, special education schools, public or private elementary, intermediate, junior high, middle or high schools;
  - 3. a Family Child Care Center or Group Child Care Center;
  - 4. another Sexually Oriented Business;
  - 5. a public park; and/or
  - 6. an entertainment or food business which is oriented primarily towards children or family entertainment; or a premises, licensed pursuant to the alcoholic beverage control regulations of the State of Michigan.
- B. A Sexually Oriented Business may not be operated within 500 feet of a boundary of any residentially zoned district or any residential structure.
- C. A Sexually Oriented Business may not be operated in the same building, structure, or portion thereof, containing another Sexually Oriented Business.
- D. For the purpose of this chapter, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a Sexually Oriented Business is conducted to the nearest property line of the premises of those entities identified in Section 16.07 A thru C above.

#### Section 16.08 - ADDITIONAL REGULATIONS FOR ADULT MOTELS

- A. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than twelve (12) hours duration creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.
- B. A person commits a Civil Infraction if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a Sexually Oriented Business license, rents or sub-rents a sleeping room to two or more persons and, within twelve (12) hours from the time the room is rented, rents or sub-rents the same sleeping room again.
- C. For the purposes of subsection (B) of this section, the terms “rent” or “sub-rent” means the act of permitting a room to be occupied for any form of consideration.

#### Section 16.09 - ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS

- A. A nude model studio shall not employ any person under the age of 18 years.
- B. A person under the age of 18 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or visible to any other person.
- C. A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.
- D. A violation of this section shall be grounds for criminal prosecution of both the underage person, and of any licensee, owner, operator, and employees who permitted the violation of the section by the underage person.
- E. It is a defense to prosecution under this chapter that a person appearing in a state of nudity did so in a modeling class operated:
  - 1. by a proprietary school, licensed by the State of Michigan, a college, junior college, or university supported entirely or partly by taxation;
  - 2. by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;
  - 3. by or in an art related business:
    - a. which has no sign visible from the exterior of the structure or other advertising that indicates a nude or semi-nude person is available for viewing; and
    - b. where, in order to participate in a class a student must enroll at least three days in advance of the class; and
    - c. where no more than one nude or semi-nude model is on the premises at any one time.

#### Section 16.10 - ADDITIONAL REQUIREMENTS FOR A SEXUALLY ORIENTED BUSINESS WITH LIVE ENTERTAINMENT

Any sexually oriented business offering live entertainment shall further comply with all of the following:

- A. A dressing area for performers must be provided with direct access to the performance area or stage, with direct access back from the performance area or stage to the dressing area, such that the performer may enter and leave the performance area or stage without entering the area from which patrons view the performance.
- B. Access to the performance area, stage, and dressing room must be handicap accessible to the extent required by law.
- C. The performance area or stage must be elevated at least 18 inches above the area from which patrons will view the performance.
- D. The dressing area for performers must be separate and not freely accessible from areas of the business accessible to patrons.
- E. The performers' dressing area must have hot and cold running water and adequate toilet facilities.
- F. An employee, owner, independent contractor, or performer of any type whose activities are characterized by the display of Specified Anatomical Areas or Specified Sexual Activities shall not engage in any physical contact with, or be within six feet of, patrons during performances; neither shall any such person receive tips or gratuities from patrons for performances.
- G. It shall be a violation of this Chapter for any employee who regularly appears semi-nude in a sexually oriented business to sit with or visit at the table of or counter seating a customer on the premises of a sexually oriented business within one (1) hour of that employee appearing semi-nude.
- H. A sign in a form to be prescribed by the Township Zoning Administrator, and summarizing the provisions of subsections F and G, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

#### Section 16.11 - REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS

- A. A person who operates or causes to be operated a Sexually Oriented Business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film video cassette, live entertainment, or other video reproduction which is characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:
  - 1. Upon application for a Sexually Oriented Business Special Exception Use Permit, the application shall be accompanied by a diagram of the premises

showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises;

2. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Elk Rapids Township Zoning Administrator;
3. It is the duty of the permittee(s) and operator(s) of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises;
4. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
5. It shall be the duty of the permittee(s) and operator(s), and also that of the agent(s) or employee(s) present in the premises to ensure that the view area specified in Subsection (4) of this Section, remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection 1 of this section.
6. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) foot candle as measured at the floor level.
7. It shall be the duty of the permittee(s) and operator(s), and also that of the agent(s) or employee(s) present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
8. No permittee(s) or operator(s) shall allow openings of any kind to exist between viewing rooms or booths.



- B. A person having a duty under Subsection 1 through 8 above commits a Civil Infraction if he/she knowingly fails to fulfill that duty.

#### Section 16.12 - SEXUALLY EXPLICIT PERFORMANCE PROHIBITED

- A. No person shall dance, entertain, display or otherwise engage in any exhibition or performance in such a manner as to expose to the view of any person within a Sexually Oriented Business, or in any other commercial establishment, any Specified Anatomical Areas, or any device, costume or covering which gives the appearance of or simulates any Specified Anatomical Areas.
- B. No person shall engage in any Specified Sexual Activities on the premises of a Sexually Oriented Business.
- C. It shall be unlawful for any person to knowingly promote the commission of any of the unlawful acts listed in subsections A or B of this section.

#### Section 16.13 - EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES

- A. It shall be unlawful for permittee(s), operator(s) or employee(s) of a Sexually Oriented Business to display or allow merchandise or activities within the establishment to be visible from any point outside of the establishment.
- B. It shall be unlawful for permittee(s), operator(s) or employee(s) of a Sexually Oriented Business to display or allow the exterior portion of the establishment to have any words, lettering, photographs, silhouettes, drawings, graphics or other pictorial representations of a sexual or explicit manner except to the extent otherwise permitted by the provisions of this chapter.
- C. Signage shall be in accordance with the requirements of Chapter 3 of the Elk Rapids Township Zoning Ordinance, except that only the name of the establishment shall be permitted on the sign. Photographs, silhouettes, drawings, graphics or other pictorial representations of a sexual or explicit nature are prohibited.
- D. It shall be the duty of the operator of a Sexually Oriented Business to:
  - 1. Post conspicuous signs approved by the Township Zoning Administrator stating that no loitering is permitted on such property.
  - 2. Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors.
  - 3. Provide dark sky type lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

- E. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.
- F. No Sexually Oriented Business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

#### Section 16.14 - PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS

- A. It shall be unlawful for permittee(s), operator(s) or employee(s) of a Sexually Oriented Business to knowingly allow a person under the age of eighteen (18) years to enter or be on the premises of the establishment.
- B. It shall be the duty of the permittee(s) and/or operator(s) of a Sexually Oriented Business to ensure that an attendant is stationed at each public entrance to the establishment at all times during regular business hours. It shall be the duty of the attendant to not allow any person under the age of eighteen (18) years to enter the establishment. It shall be presumed that an attendant knew a person was under the age of eighteen (18) years unless such attendant asked for and was furnished;
  - 1. A valid operator's, commercial operator's or chauffeur's driver's license; or
  - 2. A valid government issued photo identification certificate reflecting that such person is eighteen (18) years of age or older.

#### Section 16.15 - HOURS OF OPERATION

No Sexually Oriented Business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and noon (12:00) P.M. on Sundays.

#### Section 16.16 - NOTICES

- A. Any notice required or permitted to be given by Elk Rapids Township or any other agency under this chapter, to any owner, applicant, operator, permittee or any other entity having any interest in the Sexually Oriented Business establishment, shall be by personal delivery or by certified United States Mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the permit or in a transfer application that has been noticed to Elk Rapids Township. Notices mailed as stated above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, Elk Rapids Township shall cause it to be posted at the principal entrance to the establishment.
- B. Any notice required or permitted to be given to Elk Rapids Township by any person under this Ordinance shall not be deemed given until and unless it is received in the principal office of Elk Rapids Township.

- C. It shall be the duty of each owner, applicant, operator, permittee or any other entity having any interest in the Sexually Oriented Business establishment to furnish notice to the Elk Rapids Township Zoning Administrator, in writing, any change of residence or mailing address.

#### Section 16.17 - ADMINISTRATIVE LIABILITY

No officer, agent or employee of Elk Rapids Township shall render himself or herself personally liable for any damages that may accrue to any person as a result of any act required or permitted in the discharge of his or her duties under or in the enforcement of this Ordinance.

#### Section 16.18 - SEVERABILITY AND CAPTIONS

This Ordinance and its various parts, sections, subsections, sentences, phrases and clauses are declared to be severable. If any part, section, subsection, sentence, phrase or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected. The captions included at the beginning of each Section are for convenience only and shall not be considered a part of this Ordinance.

## **CHAPTER 17**

### **SITE PLAN REVIEW**

#### **Section 17.01 – DESCRIPTION AND PURPOSE**

It is the purpose of this Chapter to require site development plan review and approval for buildings, structures, and/or uses that can be expected to have a significant impact on natural resources, traffic patterns, adjacent parcels, and/or the character of existing and/or future development. The regulations contained in this Chapter are intended to promote:

- A. Safe and convenient traffic movement, both within a site and in relation to access streets;
- B. Harmonious relationships of buildings, structures, and uses, both within a site and with adjacent sites;
- C. Conservation of natural amenities and resources; and
- D. Compliance with the provisions of this Ordinance, the Master Plan and all other applicable Township, state, and federal laws.

#### **Section 17.02 - SCOPE**

Except as hereinafter set forth, the zoning administrator shall not issue a permit for any construction or uses until a site plan, submitted in accordance with this section, shall have been reviewed and approved by the Planning Commission.

- A. Single or two-family homes under separate ownership on an individual lot for each one.
- B. Interior, accessory and subordinate buildings requiring no new or additional means access thereto from adjoining public roads or highways and complying with all zoning ordinance requirements.
- C. Subdivisions, Site Condominiums and Land Divisions, however these applications are subject to Section 2.18 of Elk Rapids Township Zoning Ordinance and other applicable Township Ordinances.

#### **Section 17.03 - OPTIONAL SKETCH PLAN REVIEW**

- A. Preliminary sketches of proposed site and development plans may be submitted for review to the Planning Commission prior to final site plan review. The purpose of such procedure is to allow discussion between a developer and the Planning Commission to better inform the developer of the acceptability of the proposed plans prior to incurring extensive engineering and other costs which might be

necessary for final site plan approval. Such sketch plans shall include as a minimum the following:

1. The name and address of the owner and applicant or developer, including the names of any officers of a corporation or partners of a partnership.
  2. A legal description of the property and the tax number for each parcel thereof.
  3. Sketch plans showing tentative site and development plans.
- B. The Planning Commission shall not be bound by any tentative approval given at this time.
- C. Requests for sketch plan review shall be made by filing with the Township Zoning Administrator with a completed application accompanied by ten (10) copies of a sketch plan. Fees as established in the Elk Rapids Township Fee Resolution Schedule must accompany the complete application.

#### Section 17.04 - APPLICATION PROCEDURE

Requests for final site plan review shall be made by filing with the Township Zoning Administrator a completed application accompanied by ten (10) copies of a detailed site and development plan which shall contain all information required in this ordinance. The Zoning Administrator shall review the submittal to determine that all the required information has been provided. Upon finding that the Site Plan is complete, the Site Plan shall be placed on the Planning Commission's agenda for the next meeting as per Township policy. The fees as established in the Elk Rapids Township Fee Resolution Schedule must accompany the complete application.

- A. At a minimum, the application shall include the following information:
1. The applicant's full name, address and phone number including area code.
  2. Proof of property ownership, and whether there are any options on the property, or liens against it.
  3. A signed statement that the applicant is the owner of the property or officially acting on the owner's behalf.
  4. The name and address of the owner(s) of record if the applicant is not the owner of record (or firm or corporation having a legal or equitable interest in the land), and the signature of the owner(s).
  5. The address and parcel (Tax Roll) number of each parcel contained in the proposed site plan.
  6. The name and address of the developer (if different from applicant).

7. Name and address of the engineer, architect and/or land surveyor.
  8. Project title.
  9. Project description, including the total number of structures, units, bedrooms, offices, square feet, total and usable floor area, parking spaces, carports or garages, employees by shift, amount of recreation and open space, type of recreation utilities to be provided, and related information as pertinent or otherwise required by the ordinance.
  10. A vicinity map drawn at 1" = 2,000' with north point indicated.
  11. The gross and net acreage of all parcels in the project.
  12. Land uses, zoning classification and existing structures on the subject parcel and adjoining parcels.
  13. Project development phases and completion schedule.
  14. Written statements relative to project impacts on existing infrastructure (including traffic capacity of streets, schools and existing utilities) and on the natural environment of the site and adjoining lands.
- B. The site plan shall consist of an accurate, reproducible drawing at a scale of 1" = 100' or less, showing the site and all land within 150' of the site. If multiple sheets are used, each shall be labeled and the preparer identified. Each site plan shall depict the following:
1. Location of proposed and/or existing property lines, dimensions, legal descriptions, setback lines and monument locations.
  2. Existing topographic elevations at two (2) foot intervals, proposed grades and directional drainage flows.
  3. The location and type of existing soils on the site.
  4. Location and type of significant existing vegetation, and how it will be altered to permit construction of the project.
  5. Location and elevations of existing water courses and water bodies, including county drains, man-made surface drainage ways, floodplain and wetlands (as identified by the DNR in an official determination request).
  6. Location of existing and proposed buildings and intended use thereof as well as the length, width and height of each building, and typical elevation views of proposed structures.

7. Proposed location of accessory structures, buildings and uses, including but not limited to all flagpoles, light poles, bulkheads, docks, storage sheds, transformers, air conditioners, generators and similar equipment, and the method of screening where required.
8. Location of existing public roads, rights-of-way and private easements of record and abutting streets.
9. Location and dimensions of proposed streets, drives, curb cuts, and access easements, as well as acceleration, deceleration and passing lanes serving the development. Details of entryway and sign locations shall be separately depicted with an elevation view.
10. Location, design and dimensions of existing and/or proposed curbing, barrier-free access, carports, parking areas (including indication of all spaces and methods of surfacing) fire lanes and all lighting thereof.
11. Location, size and characteristics of all loading and unloading areas.
12. Location and design of all sidewalks, walkways, bicycle paths and areas for public use.
13. Location of water supply lines and/or wells, including fire hydrants and shut off valves, and the location and design of storm sewers, retention and detention ponds, waste water lines, cleanout locations, connection points and treatment systems, including septic systems if applicable.
14. Location of all other utilities on the site including but not limited to natural gas, electric, cable TV, telephone and steam.
15. Proposed location, dimensions and details of common open spaces and common facilities such as community buildings and swimming pools if applicable.
16. Location, size and specifications of all signs and advertising features showing all views.
17. All exterior lighting including lighting for parking areas or for the external illumination of buildings or grounds, or for the illumination of signs and other uses shall be directed away from and shall be shielded from residential districts and shall also be so arranged and directed as to not adversely affect driver visibility on adjacent streets. Dark sky lighting principals shall be implemented in the design of lighting. For example, lighting fixtures should be of the shoebox variety directing light downward not outward, including wall and pole mounted fixtures. A fixture proposed on a light pole shall be no greater than twenty five (25) feet in height. Site lighting shall not

exceed twenty (20) foot candles directly under the fixture as measured six (6) feet above the ground surface.

18. Location and specifications for all fences, walls and other screening features with cross sections.
19. Location and specifications for all proposed perimeter and internal landscaping and other buffering features. For each new landscape material the proposed size at the time of planting must be indicated. All vegetation to be retained on the site must also be indicated, as well as its typical size by general location or range of sizes as appropriate.
20. Location, size and specifications for screening of all trash receptacles and other solid waste disposal facilities.
21. Location and specifications for any existing or proposed above or below ground storage facilities for any chemicals, salts, flammable materials, or hazardous materials as well as any containment structures or clear zones required by government authorities.
22. Identification of any significant site amenities or unique natural features.
23. Identification of any significant views onto or from the site to or from adjoining areas.
24. North arrow, scale and date of original submission and last revision.
25. Seal of the registered engineer, architect, landscape architect, surveyor, or planner who prepared the plan.
26. Building elevations for typical units of new buildings or exterior remodeling of existing buildings, illustrating exterior building materials, building heights, and proposed wall sign or window sign area.
27. In addition to the written application and the plans, whenever the nature of the proposed development makes information or documents such as the following relevant, such documents or information shall be provided. The following is a representative list of the types of information or documents that may be requested:
  - a. Documentation confirming that the applicant has a legally sufficient interest in the property proposed for development to use it in the manner requested, or is the duly appointed agent.
  - b. Certifications from the appropriate agencies, including the local fire department, that proposed utility systems, are or will be adequate to



handle the proposed development and that all necessary easements have been provided.

- c. Legal documentation establishing property owner associations or other legal entities responsible for control over required common areas and facilities.
- d. Bonds, letters of credit, or other surety devices.
- e. Time schedules for the completion of phases in the occurrence of a staged development.
- f. Calculations for drainage and storm water design detention/retention.
- g. Drainage - Site Plans shall fully conform to the Antrim County Drain Commission standards.
- h. Erosion - Site Plans shall fully conform to the Antrim County Soil Erosion and Sedimentation Control Ordinance.
- i. Hazardous Waste Management - Site Plans shall demonstrate that reasonable precautions will be taken to prevent hazardous materials from entering the environment.
- j. Public Health - Site Plans shall fully conform to the requirements of the Michigan Department of Public Health and the Antrim County Health Department.
- k. Statutory Compliance - Site Plans shall fully conform to all applicable state and federal statutes.
- l. Conformance with Township Master Plan - Site Plans shall fully conform to the land use policies, goals and objectives of the Elk Rapids Township Master Plan.

C. Waiving of Requirements - The intent of this section is to allow an applicant to request that specific site plan requirements listed herein under Section 17.04-B be waived by the Planning Commission and not required on the site plan due to only minor improvements proposed on the site. The Planning Commission shall only be able to waive the specific requirements listed below if the proposed development is not:

- 1. Creating any new parking lots.
- 2. Creating more than 1000 square feet of impervious surface, including buildings.

3. Changing or modifying the existing elevation or grade of the site.

The Planning Commission may waive the following requirements if it is determined that they do not have any significant review applicability:

Section 17.04-B (2), (3), (13), (14), and (26)

If the Planning Commission determines that the previous waiving of any requirement impedes performing an appropriate review, the Planning Commission may require the applicant to provide such information prior to taking any official action.

#### Section 17.05 - ACTION ON APPLICATION AND PLANS

- A. Upon receipt of the application and plans, the Zoning Administrator shall record the date of the receipt thereof and transmit one (1) copy thereof to the Secretary of the Planning Commission; one copy to the Township Clerk, and one copy to the Township Planning Consultant.
- B. Planning Commission review shall be scheduled by the Secretary of the Planning Commission, or designated appointee, for review of the application and plans as well as the recommendations of the Township Planning Consultant and the Zoning Administrator. The Secretary of the Planning Commission, or designated appointee, shall deliver copies of the application and plans to all members of the Planning Commission upon receipt of same for their preliminary information and study for the review. The Township Zoning Administrator shall schedule the review within 45 days following the date of receipt of a complete application and plans.
- C. The applicant, members of the Planning Commission, the Township Planning Consultant and the Zoning Administrator shall be notified of the date, time and location of the review at the time the date is established. A notice shall be published once, at least fifteen (15) days prior to the date of public hearing, in a newspaper of general circulation in the Township to inform the general public of a site plan review.
- D. The Planning Commission shall disapprove, approve, or approve with conditions the Site Plan. The Planning Commission may impose conditions in addition to the specific requirements of this Ordinance. Conditions may be based on, but are not limited to, the following conditional criteria:
  1. To insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity.
  2. To protect the natural environment and conserve natural resources and energy.
  3. To maintain compatibility and character with the neighborhood, and to promote the use of land in a socially and economically desirable manner.

Any conditions required by the Planning Commission, together with the reasons for those conditions, shall be provided in writing to the applicant. The Planning Commission may approve the plans contingent upon the required conditions, if any or may require a further review after the same have been included in the proposed plans by the applicant.

- E. Two copies of the approved final site plan with any required modifications thereon shall be maintained as part of the Township records for future review and enforcement. One copy shall be returned to the applicant. Each of the three above mentioned copies shall be signed and dated by the Chairman of the Planning Commission and the applicant, identifying the same as the "OFFICIAL FINALLY APPROVED SITE PLAN FOR THE 'PROJECT TITLE'" as specified in Section 17.04-A-8. If any variances from the zoning ordinance have been granted or other action taken by the Zoning Board of Appeals pursuant to the project, the minutes concerning the same, duly signed, shall also be filed with the Township records as part of the site plan and a copy delivered to the applicant for his/her information and direction.

#### Section 17.06 - CRITERIA FOR REVIEW

In reviewing the application and site plan and approving, disapproving or modifying the same, the Planning Commission shall be governed by the following standards:

- A. That there is a proper relationship between the existing streets and highways within the vicinity and proposed deceleration lanes, service drives, entrance and exit driveways and parking areas to assure the safety and convenience of pedestrian and vehicular traffic.
- B. That the buildings, structures and entryway thereto proposed to be located upon the premises are so situated and designed as to minimize adverse effects upon owners and occupants of adjacent properties and the neighborhood.
- C. That as many natural features of the landscape shall be retained as possible where they furnish a barrier or buffer between the project and adjoining properties used for dissimilar purposes and where they assist in preserving the general appearance of the neighborhood or help control erosion or the discharge of storm waters.
- D. That the adverse effects of the proposed development and activities emanating there from upon adjoining residents or owners shall be minimized by appropriate screening, fencing or landscaping.
- E. That all provisions of the Township Zoning Ordinance are complied with unless an appropriate variance there from has been granted by the Zoning Board of Appeals.
- F. That all buildings and structures are accessible to emergency vehicles.
- G. That the plan, as approved, is consistent with the intent and purpose of zoning to.

1. Promote the public health, safety, and general welfare.
2. Encourage the use of lands in accordance with their character and adaptability.
3. Avoid the overcrowding of population.
4. Lessen congestion on the public roads and streets.
5. Reduce hazards to life and property.
6. Facilitate adequate provisions for a system of transportation, sewage disposal, safe and adequate water supply, education, recreation and other public requirements.
7. Conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources and property.
8. Conserve property values and natural resources.
9. Give reasonable consideration to the character of a particular area; its peculiar suitability for particular uses, and the general and appropriate trend and character of land, building and population development.

#### Section 17.07 - CONFORMITY TO APPROVED SITE PLAN

Property which is the subject of site plan approval must be developed in strict compliance with the approved site plan and any amendments thereto which have received the approval of the Planning Commission. If construction and development does not conform with such approved plan, the approval thereof shall be forthwith revoked by the Zoning Administrator of the Township by written notice of such revocation posted upon the premises involved and mailed to the developer at his/her last known address. Upon revocation of such approval, all further construction activities shall cease upon the site, other than for the purpose of correcting the violation. However, the Planning Commission may, upon proposed application of the developer after an official review, approve a modification in the site plan to coincide with the developer's construction provided such construction complies with the criteria contained in the site plan approval provisions and with the spirit, purpose and intent of the Township Zoning Ordinance.

Approval of the site plan shall be valid for a period of one (1) year after the date of approval. If a building permit has not been obtained and on-site development actually commences within said one year, the site plan approval shall become void and a new application for site plan approval shall be required, and new approval shall be required and obtained before any construction or earth change is commenced upon the site. Any such new application for site plan approval shall be processed as a completely new

request, requiring new fees, new copies of all information and plans, and full and complete review by the Planning Commission pursuant to any approval.

#### Section 17.08 - PERFORMANCE GUARANTEE REQUIRED

In the interest of insuring compliance with the zoning ordinance provisions, protecting the natural resources and the health, safety and welfare of the Township of Elk Rapids residents and future users or inhabitants of an area for which a site plan for a proposed use has been submitted, the Planning Commission may require the applicant to deposit or otherwise provide for a performance guarantee as set forth herein. The purpose of the performance guarantee is to insure completion of improvements connected with the proposed use as required by this ordinance, including but not limited to, roadways, lighting, utilities, sidewalks, drainage, fences, screens, walls, landscaping any interfacing with adjoining properties.

- A. For the purpose of executing any performance guarantee, the date of such execution shall be established by the Planning Commission in their site plan approval by establishing the required completion date of such improvements, 180 days after which the Township shall execute the performance guarantee.
- B. Performance guarantee as used herein shall mean a surety bond in the amount of the estimated cost of improvements to be made as determined by the applicant and verified by the Township Consultant, made payable to the Elk Rapids Township on the date established in accordance with Section 17.08-A.
- C. The Zoning Administrator shall not issue a zoning permit until the required performance guarantee is received by the Township Clerk.
- D. If the specified improvements have been completed within the time frame specified, the performance guarantee will be returned to the applicant upon approval by the Zoning Administrator.
- E. In the event the applicant defaults in making the improvements for which the performance guarantee was required, the Elk Rapids Township Board shall have the right to execute the performance bond to complete the improvements through contract or otherwise, including specifically the right to enter upon the subject property to make the improvements. If the performance bond is not sufficient to cover the costs incurred by the Township in completing the improvements, the applicant shall be required to pay Elk Rapids Township the amounts by which the costs of completing the improvements exceeded the amount of the performance bond.

#### Section 17.09 - APPEALS OF FINAL SITE PLAN

Persons aggrieved by a decision of the Planning Commission in granting or denying approval of a final site plan may appeal the decision to the Zoning Board of Appeals. The appeal must be filed within seven (7) days of the decision and shall state the factual basis for the appeal. An appeal shall stay action on the issuance of any permit pursuant to an approved site plan.

The Zoning Board of Appeals shall review the record of action taken on the final site plan and shall determine whether the record supports the action taken. No new evidence shall be presented. The Zoning Board of Appeals shall approve the final site plan if the requirements of this Section and other applicable ordinance requirements are met. The Zoning Board of Appeals shall make written findings in support of its opinion on the appeal.

#### Section 17.10 - LAND CLEARING

No person shall undertake or carry out such activities, or use, including any grading, clearing, cutting and filling excavating, or tree removal associated therewith for which site plan approval is first required by this ordinance. Nor shall such activity proceed prior to obtaining necessary soil erosion and sedimentation control permits, wetlands permits, or flood plain permits. Any violation of this provision is subject to the fines and penalties prescribed in Section 19.09 of this ordinance for each day of the violation from the day of discovery of the incident until an approved restoration plan, or an approved site plan is granted.

#### Section 17.11 - AMENDMENTS TO APPROVED SITE PLANS

Amendments to an approved site plan may be made as prescribed below provided that all proposed changes conform to the Zoning Ordinance.

- A. Minor amendments to an approved site plan may be approved by the Zoning Administrator provided the applicant justifies the need for these changes and that the delay in making the changes by waiting for a Planning Commission meeting would seriously disrupt the ability of the project to be completed in a timely fashion and would endanger the public health, safety and welfare. The Zoning Administrator upon approving minor amendments to the site plan shall provide a report to the Planning Commission documenting the justification for approving any changes.

Minor amendments approvable by the Zoning Administrator shall be limited to the following:

1. Relocation of building entrances or exits, or shortening of building canopies.
2. Changing the angle of parking provided there is no reduction in the amount of required off-street parking.
3. Moving of ingress and egress drives a distance of not more than one hundred (100) feet if required by the appropriate State, County or other local road authority with jurisdiction.
4. Substituting landscape materials or species provided a nurseryman, landscape architect, engineer or architect certifies the substituted species is similar in nature and will accomplish the same or an increased screening effect.

5. Change type and design of lighting fixtures provided an engineer or architect certifies there will be no change in the intensity of light at the property boundary.
  6. Increase perimeter yards.
  7. Changing the location of an exterior building wall or location not more than ten (10) feet because of a natural impediment or hazard such as bedrock or muck soils, provided that in so doing no setback requirement of the Ordinance is violated and no significant reduction in safety or in the amount of open space is thereby affected.
  8. Sidewalks.
  9. Refuse containers.
  10. Lighting.
  11. Decrease in building size from an approved site plan.
  12. Moving a proposed building on an approved site plan no more than ten (10) feet or five (5) percent of the distance to the closest property line, whichever is smaller.
  13. An increase in a building size that does not exceed five thousand (5,000) square feet or five (5) percent of the gross floor area, whichever is smaller.
- B. Any other proposed amendment which does not meet the criteria in Section 17.11-A shall be considered a major amendment and require a resubmission, review by the Planning Commission and payment of fee subject to the procedures and requirements of Chapter 17 Site Plan Review and Section 17.05-C of this Zoning Ordinance.

## **CHAPTER 18**

### **ZONING BOARD OF APPEALS**

#### **Section 18.01 - MEMBERS, APPOINTMENT, TENURE, PER DIEM EXPENSES AND REMOVAL**

- A. There is hereby created a Township Zoning Board of Appeals of seven (7) regular members.
  - 1. All the regular members of the Zoning Board of Appeals shall be selected by the Township Board from among the electors of the unincorporated areas of the Township residing within the zoning jurisdiction of the Township.
  - 2. One of the regular members of the Zoning Board of Appeals shall be a member of the Township Planning Commission appointed by the Township Board.
  - 3. One regular member of the Zoning Board of Appeals may be a member of the Township Board appointed by the Township Board.
  - 4. An elected officer of the Township Board shall not serve as Chairperson of the Township Zoning Board of Appeals.
  - 5. An employee or contractor of the Township Legislative Body may not serve as a member of the Township Zoning Board of Appeals.
- B. Term of Office - Members shall serve for a period of three (3) years. They shall continue in office until their successors are selected and qualified. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.
- C. Members of the Zoning Board of Appeals may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his or her duties.
- D. A member of the Zoning Board of Appeals may be removed by the Township Board for misfeasance, malfeasance or nonfeasance in office, upon a written statement of the reasons or grounds for the proposed removal and after a public hearing by the Township Board.
- E. A member of the Zoning Board of Appeals shall disqualify himself or herself from voting on a matter in which the member has a conflict of interest as described in Section 2.20. Failure of a member to disqualify himself or herself from voting in a matter in which the member has a conflict of interest constitutes malfeasance in office.



- F. A member of the Zoning Board of Appeals who is also a member of the Planning Commission or Township Board shall not participate in a public hearing or vote on the same matter that the member voted on as a member of the Planning Commission or the Township Board. The member may consider and vote on other unrelated matters involving the same property.

#### Section 18.02 - OFFICERS

The Zoning Board of Appeals shall elect from its membership a Chairman, Vice-Chairman and Secretary.

#### Section 18.03 - RULES OF PROCEDURE

The Zoning Board of Appeals shall adopt rules of procedure. These rules shall be available for public inspection at the Office of the Township Clerk.

- A. The Zoning Board of Appeals shall annually establish a regular schedule of Zoning Board of Appeals Meetings and the time and place of each. All such meetings and hearings shall be open to the public and subject to the Open Meetings Act. Meetings shall be held at the call of the Chairman or at other times as the Zoning Board of Appeals establishes.
- B. The presence of four (4) regular members shall constitute a quorum; the Zoning Board of Appeals shall not conduct business unless a quorum is present. The concurring vote of four (4) members of said Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass by this Ordinance, or to grant variations from the requirements of this Ordinance.
- C. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the action taken by the Zoning Board of Appeals, the reasons on which it bases its action, and the vote of each member upon each question, or, if absent, or failing to vote, indicating such fact, and shall keep record of its examination and other official action, all of which shall be filed promptly in the Office of the Township Clerk and shall be a public record.

#### Section 18.04 - JURISDICTION

- A. The Zoning Board of Appeals shall act upon all questions arising in the administration of this Ordinance, including interpretation of the Zoning Map and the text of this Ordinance.
- B. The Zoning Board of Appeals shall hear and decide all appeals from any order, requirement, decision, or determination made by the Zoning Administrator, other administrative official or body authorized to enforce the provisions of this Ordinance.
- C. The Zoning Board of Appeals shall hear and decide all petitions for dimensional variances. A variance may be applied for and granted under Section 4 of the Uniform

Condemnation Procedures Act, Public Act 87 of 1980, as amended, and as provided in the Zoning Enabling Act, Public Act 110 of 2006, as amended. The Zoning Board of Appeals shall have the authority to grant nonuse variances relating to the construction, structural change, or alteration of buildings and structures or to any other nonuse-related standard in the Ordinance.

- D. The Zoning Board of Appeals shall hear and decide all matters assigned to it for decisions under the terms of this Ordinance.
- E. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify an order, requirement, decision, or determination made by the Zoning Administrator or other Administrative Board or official relating to this Ordinance and may issue or direct the issuance of a permit, unless jurisdiction is not applicable in specific areas.
- F. The Chairman or acting Chairman may administer oaths and compel the attendance of witnesses consistent with MCL 125.3602(1).

#### Section 18.05 - POWERS OF THE ZONING BOARD OF APPEALS

The Zoning Board of Appeals shall have the power to hear applications:

- A. Where it is alleged that there is error or misinterpretation in any order, requirement, decision, grant or refusal made by the Zoning Administrator or any other Administrative Board or official charged with the enforcement of the provisions of the Ordinance.
- B. Where by reason of the exceptional narrowness, shallowness, or shape of a specific piece of property on the effective date of this Ordinance, or by reason of exceptional topographic conditions, or other extraordinary conditions of land, buildings or structure, or of the development of property immediately adjacent to the property in question, the literal enforcement of the requirements of this Ordinance would involve practical difficulty.

#### Section 18.06 - VARIANCES

No variance in the provisions or requirements of this Ordinance shall be authorized by the Zoning Board of Appeals unless the Zoning Board of Appeals makes findings, based upon competent, material and substantial evidence on the whole record, and meets the following standards:

- A. Special conditions or circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zone.
- B. Literal interpretation of the provisions of this Ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same zone under the terms of this Ordinance.

- C. The special conditions or circumstances do not result from the actions of the applicant.
- D. The authorizing of such variance will not be of substantial detriment to the neighboring property and will not be contrary to the spirit and purpose of this Ordinance.

No nonconforming use of neighboring lands, structures or buildings shall in itself be considered grounds for the issuance of a variance. If there are practical difficulties for nonuse variances in the way of carrying out the strict letter of the Ordinance, the Zoning Board of Appeals may grant a variance, so that the spirit of the Ordinance is observed, public safety secured, and substantial justice done.

#### Section 18.07 - CONDITIONS OF APPROVAL

In authorizing a variance, the Zoning Board of Appeals may, in addition to the specific conditions of approval called for in this Ordinance, attach thereto such other conditions regarding location, character, landscaping or treatment reasonably necessary to the furtherance of the intent and spirit of this Ordinance and the protection of the public interest.

#### Section 18.08 - TIME LIMITATIONS ON VARIANCES

Any variance granted by the Zoning Board of Appeals shall automatically become null and void after a period of twelve (12) months from the date granted unless the owner or his/her agent shall have taken substantial steps toward effecting the variance as granted by the Zoning Board of Appeals.

#### Section 18.09 – APPEAL PROCEDURE

The following procedure shall be required:

- A. An appeal for variance from or review of any ruling of the Zoning Administrator or other administrative office administering any portion of this Ordinance may be taken by any person or any governmental department affected or aggrieved.
- B. An application for variance or review authorized by this Ordinance may be taken by any person or governmental department affected.
- C. Fees. Each application for variance or review shall be accompanied by a filing fee as established in the Elk Rapids Fee Resolution Schedule.
- D. When an application or appeal has been filed in proper form and with the required data, the Secretary of the Zoning Board of Appeals shall immediately place the said application or appeal upon the calendar for public hearing and give notices in accordance with the following:
  - 1. The notice shall be published once, at least fifteen (15) days prior to the date of the public hearing, in a newspaper of general circulation in the Township.

2. For applications to the Zoning Board of Appeals involving a specific parcel of land, a notice of public hearing shall be mailed by way of U.S. first class mail or personally delivered to the following persons, at least fifteen (15) days prior to the date of the public hearing:
  - a. The applicant and the owner of the subject property, if different from the applicant;
  - b. All persons to whom real property is assessed for property taxes within three hundred (300) feet of the property that is the subject of the application regardless of whether the property or structure is in the Township;
  - c. One occupant of each dwelling unit or spatial area in each building that contains four (4) or fewer dwelling units and is located within three hundred (300) feet of the subject property regardless of whether the property or structure is in the Township; and
  - d. The owner or manager of a building containing more than four (4) dwelling units, who shall be requested in writing to post the notices at the primary entrance of the building, but failure of such posting, shall not constitute a lack of notice to the owners or occupants of such dwelling units.
3. The notice of public hearing shall include the following information:
  - a. A description of the application or request.
  - b. An identification of the property that is the subject of the application or request.
  - c. The date and time when the application or request will be considered; the location of the public hearing.
  - d. The location or address where written comments concerning the application or request will be received; the period of time within which such written comments may be submitted.

E. An applicant may appear personally or by agent or attorney at the public hearing.

#### Section 18.10 - DECISIONS OF THE ZONING BOARD OF APPEALS

- A. The Zoning Board of Appeals shall decide all applications and appeals within thirty (30) days after the final hearing thereon.

- B. A copy of the Zoning Board of Appeals decisions shall be transmitted to the applicant or appellant and to the Zoning Administrator within forty-eight (48) hours of such decision.
- C. All decisions shall be binding upon the Zoning Administrator and observed by him, and he shall incorporate the terms and conditions of the same in the permit to the applicant or incorporate the terms and conditions of the same in the permit to the applicant or appellant whenever a permit is authorized by the Zoning Board of Appeals.
- D. A decision of the Zoning Board of Appeals shall not become final until the expiration of five (5) days from the date such decision is made unless the Zoning Board of Appeals shall find the immediate effect of such decision is necessary for the preservation of property or personal rights and shall so certify on the record.
- E. The decision of the Zoning Board of Appeals shall be final; a party aggrieved by the decision may appeal to Circuit Court in accord with MCL 125.3607.

#### Section 18.11 - STAY OF PROCEEDINGS

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Zoning Board of Appeals after notice of appeal shall have

been filed with him, that by reason of fact stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may, on due cause shown, be granted by the Zoning Board of Appeals or by the Circuit Court on application, after notice to the Zoning Administrator.

## **CHAPTER 19**

### **ADMINISTRATION AND ENFORCEMENT**

#### **Section 19.01 - ZONING PERMIT REQUIRED**

It shall be unlawful for any person to commence excavation for, or construction of any building, structure or parking area, or to make structural change, alteration or addition in any existing building or structure or relocate any building or structure without first obtaining a zoning permit from the Zoning Administrator. No permit shall be issued for the construction, alteration, addition or relocation of any building or structure until an application has been submitted showing that the construction proposed is in compliance with the provisions of this Ordinance and any required zoning permit fees paid. No plumbing, building, health, electrical or drainage permit shall be issued until the Zoning Administrator has determined that the plans and designated use indicate that the structure and premises, if constructed as planned and proposed, will conform with the provisions of this Ordinance, and paying the permit fee therefore as established by the Township Board.

Exception to the above requirement of a zoning permit for construction or relocation:

- A. Accessory structures not exceeding one hundred (100) square feet and having no permanent foundation provided however that such building shall be placed in accordance with Section 2.06.
- B. Decks, porches, and patios not exceeding 150 square feet and less than 12 inches above grade and having no permanent foundation, providing however that such Structure shall be placed in accordance with Section 2.06.

#### **Section 19.02 - ADMINISTRATIVE OFFICIALS**

Except as otherwise provided in this Ordinance, the Zoning Administrator shall administer and enforce this Ordinance including the receiving of applications, the inspection of premises, the issuing of zoning permits, and the institution of proceedings for enforcement of the provisions of this Zoning Ordinance. Relative to the issuance of a permit, any decision rendered by the Zoning Board of Appeals, Planning Commission, or Township Board on a matter required to be reviewed by that body shall be binding on the Zoning Administrator.

#### **Section 19.03 - PERMITS**

Every application for a zoning permit shall be made as required by the Zoning Ordinance and shall designate the existing or intended use of the structure or premises, or part thereof which it is proposed to alter, erect, or extend, and the number of dwelling units, if any, to occupy it. The application shall be accompanied by two (2) prints or Photostat copies of the drawings, drawn to scale, showing the actual lines, angles and dimensions of the lot to be built upon or used, and the exact size and location on the lot of all existing and proposed structures and uses, together with specifications. The application shall

contain other information with respect to the lot and adjoining property as may be required by the Zoning Administrator. One (1) copy of both plans and specifications shall be filed in and retained by the Office of the Zoning Administrator, and the other shall be delivered to the applicant when the Zoning Administrator has approved the application and issued the permit. In cases of minor alterations, the Zoning Administrator may waive portions of the foregoing requirements obviously not necessary for determination of compliance with this Ordinance. Any permit required by this Zoning Ordinance of the Township shall be displayed face out, within twenty-four (24) hours of its issuance by placing the same in a conspicuous place on the premises facing the nearest roadway, and shall be continuously so displayed until all work, or the term for which issued, or purpose for which issued, is completed. Failure to obtain and display any such permit shall constitute a violation of the Zoning Ordinance and shall subject each person or persons or corporations for whose benefit the permit is required, and the owner or owners of the premises involved to prosecution for such violation.

Every 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 for the commencement of construction or for the completion of construction can be granted by the Zoning Administrator upon proof that an extension of time is justified.

#### Section 19.04 - OCCUPANCY

It shall be unlawful to use or permit the use of any structure or premises hereafter altered, extended or erected, until the Zoning Administrator shall have made an inspection of the premises and signed a Certificate of Occupancy. The Zoning Administrator shall not sign a Certificate of Occupancy until he has ascertained that there has been compliance with all the requirements of this Ordinance and substantially all of the approved plans of the building.

#### Section 19.05 - ENFORCEMENT

All premises affected by this Ordinance shall be subject to inspection by the Zoning Administrator and the Administrator may collect such investigative data as he deems necessary for the enforcement of this Ordinance. No person shall refuse to permit the Administrator to inspect any premises at reasonable times, nor shall any person molest or resist the Administrator in the discharge of his duties.

#### Section 19.06 - AMENDMENTS

Amendments or supplements to this Zoning Ordinance may be made from time to time in the manner provided by law.

##### A. Procedure

1. The Planning Commission may propose amendments on its own initiative.

2. Any resident or land owner of the Township may bring before the Planning Commission a proposed amendment or change by filing a petition signed by all persons having an interest in such premises to be acted upon requesting the adoption of any specified amendment or change or regulation under the Zoning Ordinance. If the proposed amendment pertains to rezoning, such application or petition shall be accompanied by a development plan as provided in C of this Section. The Township Clerk shall file the same with the Secretary of the Planning commission within ten (10) days of the date the petition was filed with the clerk.

B Contents of Application -The Application requesting a proposed amendment or change shall contain the following:

1. The legal description of the premises involved.
2. The zone in which such premises are presently situated.
3. The zone into which applicant desires such premises to be situated.
4. The use to be made of such premises if rezoned.
5. The signatures of all persons having an interest in such premises.

C. Contents of Development Plan - If the proposed amendment pertains to rezoning, the petition shall be accompanied by a development plan which shall include the following:

1. A topographic map showing existing and proposed contour lines at five (5) foot intervals.
2. A plot plan which shall show the following:
  - a. Location of all buildings.
  - b. Drawings showing the elevations and architectural style thereof.
  - c. All non-enclosed uses.
  - d. All drainage.
  - e. Parking.
  - f. Loading and traffic handling facilities.
  - g. Screening and other landscaping.
  - h. All exterior lighting and signs.



- i. Sewage disposal systems.

Such portions of the development plan may be waived by the Planning Commission if, because of the nature of the proposed use, the same would be unnecessary and serve no useful purpose.

- D. Fees - The required fees for rezoning premises are a part of the cost of the rezoning action and are in addition to other zoning permit fees. The fees as established in the Elk Rapids Township Fee Resolution Schedule must accompany any application filed for the purpose of rezoning any property.
- E. Action on Application by Planning Commission - Said application shall be considered by the Planning Commission at its next meeting following the receipt thereof by its Secretary, provided, however, that there is adequate and sufficient time for giving any public notices required by law. The Planning Commission may recommend to the Township Board, modification, rejection or the adoption of said proposal either in its original or changed form.
- F. Duties of Planning Commission and Township Board
  - 1. Before submitting its recommendations of a tentative rezoning plan to the Township, the Planning Commission shall hold at least one (1) public hearing.
  - 2. When an application for rezoning has been filed in proper form and with the required data, the Secretary of the Planning Commission shall immediately place the said application upon the calendar for hearing and publish and disseminate notices.
    - a. A notice shall be published once, at least fifteen (15) days prior to the date of the public hearing, in a newspaper of general circulation in the Township. A notice of public hearing shall be mailed by way of U.S. first class mail or personally delivered to the following persons, at least fifteen (15) days prior to the date of the public hearing:
      - (1) The applicant.
      - (2) All persons to whom real property is assessed within three hundred (300) feet of the property that is the subject to the application; and
      - (3) The occupants of all structures within three hundred (300) feet of the property that is the subject of the application. If the name of the occupant is unknown, the term "Occupant" may be used in making notification. If the above-described three hundred (300) foot radius extends outside of the Township's

boundaries, then notice must be provided outside of the Township boundaries, within the three hundred (300) foot radius, to all persons in the above-stated categories.

- b. The notice of public hearing shall include the following information:
  - (1) A description of the nature of the application or request.
  - (2) An identification of the property that is the subject of the application or request. The notice shall include a listing of all existing street addresses within the property; provided, however, that street addresses do not need to be created and listed if no such addresses currently exist within the property; and provided further that street addresses do not need to be listed if eleven (11) or more adjacent properties are being proposed for rezoning;
  - (3) State when and where the application or request will be considered.
  - (4) Identify when and where written comments will be received concerning the application or request.
- c. Any party may appear at such hearings in person or by agent or attorney.

- 3. Following such hearing, the Township Planning Commission shall submit the proposed amendment or supplement to the Antrim County Planning Commission for its review. The County Planning Commission shall recommend approval or disapproval of the plans as provided by law.
- 4. Thereafter, the Township Board may adopt the same with or without any amendments or recommendations that have been previously considered by the Township or County Planning Commissions, and may make revisions in the same.

- G. Power of Revocation - The Township Board shall have the power to revoke or cancel any change of zoning effected for any failure to neglect to comply with any provisions of this Ordinance, or in case any false statement or misrepresentation is made in any petition, application, specification, plan or sketch submitted or filed pertaining to rezoning proceedings, or for failure to carry out any provision of such application, petition, specification, plan or sketch or conditions or provisions on which such rezoning of property was granted. In such case the prior zoning of the property in question shall automatically be reinstated.

### Section 19.07 - SPECIAL EXCEPTIONS

A Special Exception Use is a use that is permitted within a specified zone after meeting specific requirements listed in this Section and in the zone. It is the purpose of this Section to provide a process for dealing with a Special Exception Use application, provide general standards and describe the method for addressing an individual special exception use not listed in the Ordinance. Due to the nature of the use, Special Exception Uses require special consideration in relation to the welfare of adjacent properties and to the community as a whole.

A. Every application for special exception shall be accompanied by:

1. A site plan as specified in Chapter 17.
2. A filing fee as established in the Elk Rapids Township Fee Resolution Schedule.
3. A narrative describing in detail the proposed Special Exception Use and detailing why the location selected is appropriate.
4. Applicant's statement of the expected effect of the special use on emergency service requirements, schools, storm water systems, sanitary sewer facilities, automobile and truck circulation patterns, and local traffic volumes.
5. Any additional material information necessary to consider the impact of the project upon adjacent properties and the general public as may be required by this ordinance, by the Zoning Administrator or the Planning Commission; including, but not limited to, measures which will be undertaken to control soil erosion, shoreline protection, excessive noise, light pollution or adverse impacts of the development on the surrounding properties; elevations on all buildings, including accessory buildings; and, an environmental assessment consistent with Township guidelines.

B. When an application has been filed in proper form and with the required data, the Secretary of the Planning Commission shall immediately place the application upon the calendar for hearing and publish and disseminate notices.

1. A notice shall be published once, at least fifteen (15) days prior to the date of the public hearing, in a newspaper of general circulation in the Township. A notice of public hearing shall be mailed by way of U.S. first class mail or personally delivered to the following persons, at least fifteen (15) days prior to the date of the public hearing:
  - a. The applicant.
  - b. All persons to whom real property is assessed within three hundred (300) feet of the property that is the subject to the application.

- c. The occupants of all structures within three hundred (300) feet of the property that is the subject of the application. If the name of the occupant is unknown, the term "Occupant" may be used in making notification. If the above described three hundred (300) foot radius extends outside of the Township's boundaries, then notice must be provided outside of the Township boundaries, within the three hundred (300) foot radius, to all persons in the above-stated categories.
- 2. The notice of public hearing shall include the following information:
  - a. A description of the nature of the application or request.
  - b. An identification of the property that is the subject of the application or request. The notice shall include a listing of all existing street addresses within the property; provided, however, that street addresses do not need to be created and listed if no such addresses currently exist within the property.
  - c. State when and where the application or request will be considered.
  - d. Identify when and where written comments will be received concerning the application or request.
- 3. Any party may appear at such hearings in person or by agent or attorney.
- C. At any public meeting, the Planning Commission shall consider approval of the special exception under the provisions of Chapter 17 and this Section.
- D. All conditions of approval of the special exception by the Planning Commission shall take effect immediately upon approval. Any application approved by the Planning Commission, either as submitted or resubmitted in modified form, shall constitute a binding agreement by the applicant that the special exception use permitted shall be made, completed and operated as shown on the development plan. Failure to complete the permitted activity in conformance to the agreed upon development plan and conditions or to undertake the activity within one (1) year shall cause loss of special exception status and reversion to former zoning classification.
- E. The Planning Commission decision of approval or disapproval of a special exception application shall not be appealed to the Zoning Board of Appeals.
- F. General Review Standards. The Planning Commission, before acting on a Special Exception Use permit application, shall:
  - 1. Utilize and be guided by standards which shall be consistent with and promote the intent and purpose of this Ordinance,

2. Ensure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use.
  3. The Planning Commission shall review each application and take action to approve a special exception use application only if it finds that such Special Exception Use meets each of the following standards, together with any and all Special Exception Use standards reflected for the zoning district, and any and all applicable specific review standards found in this Ordinance.
  4. The Planning Commission shall determine that adequate facts and evidence have been presented by the applicant that each use at its proposed location will be consistent with the public health, safety, and welfare of the Township and shall comply with the following Special Exception Use standards:
    - a. The application is consistent with the adopted Elk Rapids Township Master Plan.
    - b. The project is designed, constructed, operated and maintained to be consistent with the existing character of the general vicinity and such use will not change the essential character of the area in which it is proposed.
    - c. The proposed use is not hazardous to existing or planned uses in the same general vicinity and in the community as a whole.
    - d. The proposed facility is served adequately by essential public facilities and services, such as highways, streets, police and fire protection, storm water drainage, refuse disposal, water and sewage facilities, and schools; or persons or agencies responsible for the establishment of the proposed use shall provide adequately for such services.
    - e. The proposed use does not create excessive additional requirements at public cost for facilities and services and will not be detrimental to the economic welfare of the community.
    - f. The proposed activity does not involve uses, activities, processes, materials and equipment or conditions of operation that will be detrimental to any property or general welfare by reason of excessive production of traffic, noise, vibration, smoke, toxic emissions, fumes, glare, or odors.
    - g. The proposed use shall 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 will be in compliance with these standards.
- G. Conditions and Approval Standards. The Planning Commission may establish reasonable conditions of approval for a Special Exception Use permit. The conditions may include, but are not limited to, conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of:

1. Accommodating increased service and facility loads caused by the land use or activity,
  2. Protecting the natural environment and conserve natural resources and energy,
  3. Insuring compatibility with adjacent uses of land, and
  4. Promoting the use of land in a socially and economically desirable manner.
- H. If a proposed use of land or use of a building is not addressed by this Ordinance, the Zoning Administrator and/or the potential applicant may request a determination by the Planning Commission. If the Planning Commission determines that such use is not addressed by this Ordinance, then the Planning Commission may permit such use as a Special Exception Use only after it develops and adopts specific review standards for the proposed Special Exception Use. Any such conditions imposed or specific review standards employed shall:
1. Be designed to protect natural resources, the health, safety, and welfare, and the social and economic well being of those who will use the land use or activity under consideration, residents and landowners in the vicinity of 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 Township Master Plan and the Township 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 19.08 – FEES AND ESCROW DEPOSITS

Any fee required by this Ordinance shall be paid to the Township Treasurer before any action shall be taken on the application. Said amount so received shall be retained whether the requested relief or action is granted or not and shall be used as provided by law. All expenses incurred by the Township through the review of, and in the course of carrying out a public hearing for a Special Use/Special Exception, Non-Conforming Use Upgrade, Site Plan Review, Site Plan Modification, or Rezoning, shall be at the expense of the applicant. Fees may be changed by the Township Board at any regular meeting, which change shall be effective thirty (30) days from the date of publication of such change.

- A. The Township Board shall establish the fees for land use permits and other applications.
- B. For any application for site plan approval, a Special Land Use Permit, Planned Development, variance, or other use, project, or activity requiring a permit under this Ordinance, the Zoning Administrator, Planning Commission, Zoning Board of

Appeals, or Township Board may require the deposit of fees to be held in escrow in the name of the applicant.

1. An escrow fee shall be required for any project with more than ten (10) dwelling units, or more than ten thousand (10,000) square feet of enclosed space, or which requires more than twenty (20) parking spaces.
2. A schedule of fees as established by the Township Board, which may change from time to time, shall be maintained at the office of the Zoning Administrator.
3. Fees shall be paid to the Zoning Administrator prior to the processing of any application required under this Zoning Ordinance.
4. An escrow fee shall be required for any other application for the plan approval, special land use permit, planned development, variance, or other use, project, or activity requiring a permit under this Ordinance, to cover reasonable costs of reviewing such application at the discretion of the Zoning Administrator or reviewing body.
5. Escrow fees shall be used only to cover expenses including staff costs or consultant fees covering planning, engineering, environmental analysis, wetland delineation, legal review, and other professional and technical services required for a proper and thorough review of the application.
6. Professional review will result in a report to the Township indicating the extent of conformance or nonconformance with this Zoning Ordinance and to identify any problems which may create a threat to factors including, but not limited to, public health, safety, general welfare, and the overall environment. Mitigation measures or alterations to a proposed design may be identified where they would serve to lessen or eliminate identified impacts. If requested, the Township will provide a copy of any professional review and a copy of the statement of expenses for the professional services rendered to the applicant.
7. If actual professional review costs exceed the amount of an escrow, the applicant shall pay the balance due prior to receipt of any zoning or other permit issued by the Township in response to the applicant's request. Official action, at the discretion of the Zoning Administrator or reviewing body, for any application may be postponed if funds in escrow fund are exhausted and are necessary for further professional review.
8. The Township shall account for the expenditure of all such funds and shall promptly refund any remaining funds within sixty (60) days of final action by the reviewing board or official.

#### Section 19.09 - VIOLATIONS AND PENALTY

- A. Any building, structure or use constructed, altered, moved or maintained in violation of the provisions of this Ordinance is hereby declared to be a nuisance per se. The Township Board may institute proceedings in an appropriate court to enjoin, abate and remove said nuisance.
- B. Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists enforcement of any of the provisions of this Ordinance shall be fined not less than twenty-five (\$25.00) dollars nor more than five hundred (\$500.00) dollars, or imprisoned for not more than ninety (90) days, or both, such fine and imprisonment at the discretion of the Court, together with court cost. Every day that violation is permitted to exist shall constitute a separate offense.

#### Section 19.10 - VALIDITY

Should any section, subsection clause or provision of this Ordinance be declared by the courts to be invalid such decision shall not affect the validity of the Ordinance in its entirety or any part thereof other than the portion declared to be invalid.