

ARTICLE

6

ADMINISTRATION
& ENFORCEMENT

Chapter 6.1 • ADMINISTRATIVE ORGANIZATION

Section 6.101 OVERVIEW

The Village Manager, or his designee, is responsible for enforcing the provisions of this Ordinance with the administrative responsibilities vested in the following Village entities:

- A. Village Council.**
- B. Planning Commission.**
- C. Zoning Board of Appeals.**
- D. Zoning Enforcement Officials**, which shall include the Village Manager and his designee(s).

The purpose of this Chapter is to set forth the scope of authority of these entities.

Section 6.102 VILLAGE COUNCIL

The Village Council shall have the following responsibilities and authority pursuant to this Ordinance.

- A. ADOPTION OF ZONING ORDINANCE AND AMENDMENTS.** In accordance with the intent of this Ordinance, and pursuant to the authority conferred by Michigan Public Act 110 of 2006, as amended, the Village Council shall have the authority to adopt this Ordinance, any amendments to this Ordinance which have been previously considered by the Planning Commission or at a hearing, or as decreed by a court of competent jurisdiction.
- B. SETTING OF FEES.** The Village Council shall, by resolution, have the authority to set all fees for permits, applications, and requests for action pursuant to the regulations set forth in this Ordinance. In the absence of specific action taken by the Village Council to set a fee for a specific permit or application, the Village Manager shall assess the fee based on the estimated costs of processing and reviewing the permit or application.

Section 6.103 PLANNING COMMISSION

- A. CREATION.** The Village Planning Commission is created pursuant to Michigan Public Act 33 of 2008, as amended. The Planning Commission shall have all the powers and duties provided for zoning commissions created pursuant to Michigan Public Act 110 of 2006, as amended.
- B. JURISDICTION.** The Planning Commission shall discharge the following duties:
 - 1. Review, revise, and enforce the Zoning Ordinance.**
 - 2. Site Plan Approval.**
 - 3. Special Land Use Approval.**
 - 4. Master Plan.**
 - 5. Other Duties and Responsibilities.** The Planning Commission shall be responsible for review of plats and any other matters relating to land development referred to the Commission by Village Council. The Planning Commission shall recommend appropriate regulations and action on such matters.

Section 6.104 ZONING BOARD OF APPEALS (ZBA)

- A. CREATION.** A five member Zoning Board of Appeals is hereby created, referred to as the Board of Appeals, which shall perform its duties and exercise its powers and jurisdiction, to the end that the objectives of this Ordinance are observed, public safety and general welfare secured, and substantial justice done. The Board of Appeals shall fix rules and regulations to govern its procedures.
- B. MEMBERSHIP.** Members of the Board of Appeals shall be appointed by the President of the Village of Three Oaks subject to confirmation by the Village Council. The membership shall serve at the pleasure of the Village Council for three year terms. The Village Council may appoint two alternate members who shall serve in the absence of any member(s) or serve in the instance that a member must be recused from any matter before the Board.
- C. JURISDICTION.** The Board of Appeals shall hear and decide on all matters relating to the following:
- 1. Generally.** Hear and decide on all matters referred to it by the provisions of this Ordinance.
 - 2. Appeals from Administrative Decisions.** Hear and decide appeals from, and review any order, requirement, decision or determination made by the building, planning, or public services department in the enforcement of this Ordinance.
 - 3. Interpretation.** Interpret the text of this Ordinance and the boundary of any zoning ordinance district as depicted on the Official Zoning Map.
 - 4. Issue Variances and Warrants.** Where there are practical difficulties or unnecessary hardships, within the meaning of state law and this Ordinance, in the way of carrying out the strict letter of this ordinance, the Zoning Board of Appeals shall have the power upon appeal in specific cases to authorize such variation or modification of the provisions of this Ordinance so that the spirit of this Ordinance shall be observed, public safety and welfare secured and substantial justice done.

Section 6.105 ZONING ENFORCEMENT OFFICIALS

- A. ESTABLISHMENT OF THE ENFORCEMENT OFFICIALS.** The provisions of this Ordinance shall be administered by the Village Zoning Enforcement Officials. Duties shall be the administration of this Ordinance, including issuance of all zoning compliance statements whether an individual statement or as part of the issuance of a building permit pursuant to the Village Building Code, acceptance of any and all applications required in the administration of the Ordinance any other duties assigned or delegated to the Zoning Official by the Village Council or any other law regulation or Ordinance of the State of Michigan or the Village of Three Oaks.

The enforcement of this Ordinance shall be administered and enforced by the Enforcement Officer designated by and responsible to the Village Council.

- B. JURISDICTION.** Zoning Enforcement Officials shall have the following powers:
- 1. Form of Application, Permits and Certificates.** To prescribe the form of all applications, permits (including a Zoning compliance permit when required by the terms of this Ordinance), and certificates required under the terms of the ordinance. If no form is prescribed, a written document in the form of a letter requesting permission, in the case of an application stating precisely what permission is requested, or granting permission, in the case of a permit, stating precisely what permission is granted will suffice.
 - 2. Receive Applications.** Receive and examine and certify completeness of all applications for permits, certificates, variances, and all other applications required under this Ordinance.

3. **Refer Applications to the Planning Commission or Board of Appeals.** Upon a finding that an application is complete, must refer all applications for permits, certificates, variances, special use permits and any other applications to the appropriate body
4. **Issue or Refuse Permits.** Issue permits for constructions, alternation, and occupancy of those uses which comply with Ordinance requirements.
5. **Issue Notice of Violation.** To issue a written notice of violation to each violator of this Ordinance, stating the nature of the violations with duplicate copies of the notice sent to the Planning Commission.
6. **Make Recommendations.** To make recommendations to the Planning Commission or Board of Appeals for any action deemed necessary.
7. **Records.** To keep records of applications, permits, or certificated issued, of variances and special use permits granted, inspections made, any report issued and notices or orders issued.
8. **Additional Duties and Powers.** Perform all other duties, and may exercise all other powers and privileges, as provided by this Ordinance.

Chapter 6.2 • SITE PLAN REVIEW

Section 6.201 PURPOSE

The purpose of site plan review is to determine the following:

- A. Compliance with this Zoning Ordinance;
- B. To promote the orderly development and redevelopment of the Village through an open and predictable review process;
- C. To promote the stability of land values and investments and the general welfare of the community;
- D. To help prevent the impairment or depreciation of land values and development/redevelopment by the erection of structures or additions thereto without proper attention to siting and appearance;
- E. To require the gradual upgrade of existing sites that do not conform with current standards of this Zoning Ordinance; and
- F. To ensure that the arrangement, location, design and materials within a site are consistent with the character of the Village and the goals and objectives of the Master Plan.

Section 6.202 TYPE OF SITE PLAN REQUIRED

NEW DEVELOPMENT. The Zoning Official shall not issue a statement of zoning compliance or issue a building permit for any proposed development in the R-2 and R-3 Residential, C-1 Commercial, MU-1, MU-2, MU-3 Mixed districts, I-1 Industrial districts, or for any use requiring more than four (4) parking spaces in the R-1 Residential district except a single-family dwelling proposed for construction as an allowable use in these districts or as otherwise required in this Ordinance until a site plan has been reviewed and approved by the Planning Commission.

EXISTING DEVELOPMENT. The Zoning Official, upon review of a site plan for the addition to, modification of, or the demolition of any part of a legally conforming existing building or structure and upon finding the modification, addition to, modification of, or the demolition thereof conforms with the specifications of the district in which the property is located, shall issue a statement of zoning compliance or a building permit, provided the proposed action is in compliance with all other applicable laws and ordinances.

BUILDING FACADE PLAN. The Zoning Official shall not issue a statement of zoning compliance or building permit for any proposed development in the MU Mixed Use Districts until a building facade plan has been reviewed and approved by the Planning Commission.

APPLICATION PROCEDURES. An application for site (and building facade plan, when required) plan review shall be submitted twenty (20) days prior to the next scheduled Planning Commission meeting through the Zoning Official, who will review the application and plans for completeness, then transmit the application and site plan to the Planning Commission

Section 6.203 PRELIMINARY SITE AND BUILDING FACADE PLAN REVIEW

Preliminary sketches of proposed site and other development plans, including building facade plans, when required, may be submitted for review to the Planning Commission prior to final site plan submission. The purpose of such procedure is to allow discussion between the applicant and the Planning Commission and when determined by the Planning Commission, the Downtown Development Authority to better inform the

applicant of the acceptability of his proposed plans prior to incurring extensive engineering and other costs which might be necessary for a final site plan.

- A. PRELIMINARY SITE PLANS SHALL INCLUDE, AS A MINIMUM, THE FOLLOWING:**
1. Legal description of the property.
 2. Small scale sketch of properties, streets, and uses of land of all properties abutting or across the street from the subject property.
 3. A generalized map, schematic plans and building sketches showing any existing or proposed arrangement of: Streets and lots; access points and other transportation arrangements; buffer strips, fences, wall and screening; natural characteristics including, but not limited to, open space, stands of trees, brooks, ponds, floodplain, hills, and similar natural assets; signs - location and lighting; buildings and other structures; architectural style, exterior surface materials, and the exterior surface color of all building facades that are viewable from a public street or right-of-way; and a Hazardous Material Report form for site plan review and state and/or County environmental permit checklist, as required by any applicable ground water protection ordinance adopted by the Village.
 4. A narrative declaration including: the overall objectives of the proposed development; number of acres (or square feet) allocated to each proposed use and gross area in building, structures, parking, public and/or private streets and drives, and open space; dwelling unit densities by type; proposed method of providing sewer and water service as well as other public and private utilities; and proposed method of providing storm drainage.
- B. FACADE PLANS SHALL INCLUDE, AS A MINIMUM, THE FOLLOWING:** A generalized map, schematic plans and building sketches showing the existing proposed changes to the architectural style exterior surface materials and exterior surface color of all building facades viewable from a public street.
- C. PLANNING COMMISSION REVIEW OF PRELIMINARY SITE PLAN.** The Planning Commission shall review the preliminary site plan and make recommendations to the applicant at the regular Planning Commission meeting based on the purposes, objectives, and requirements of this Ordinance.
- D. PLANNING COMMISSION REVIEW OF FACADE PLAN.** The Planning Commission shall review the building facade plan and make recommendations based on approved downtown Plans and/or Design and Appearance Standards and Guidelines.

Section 6.104 FINAL SITE PLAN REQUIREMENTS

Each final site plan submitted for review shall have a sheet size of at least twenty four (24) inches by thirty six (36) inches and shall include the following information and such any other information as may be required by the Planning Commission from its review of the preliminary site plan:

- A. DESCRIPTIVE AND IDENTIFICATION DATA**
1. Applicant's name and address, and telephone number.
 2. Title block indicating the name of the development.
 3. Scale.
 4. Northpoint.
 5. Dates of submission and revisions (month, day, and year).
 6. Location map drawn to scale with northpoint.
 7. Legal and common description of property.
 8. The dimensions of all lots and property lines, showing the relationship of the site to abutting properties. If the site is a part of a larger parcel, the plan should indicate the boundaries of total land holding.
 9. A schedule for completing the project, including the phasing or timing of all proposed developments.
 10. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared plan.
 11. Written description of proposed land use.

12. Zoning classification of applicant's parcel and all abutting parcels.
13. Proximity to driveways serving adjacent parcels.
14. Proximity to intersection corner and major thoroughfares.
15. Notation of any variances which have or must be secured.
16. Net acreage (minus rights-of-way) and total acreage, to the nearest 1/10 acre.

B. SITE DATA

1. Existing lot lines, building lines, structures, parking areas, and other improvements on the site and within 100 feet of the site.
2. Front, side, and rear setback dimensions.
3. Topography on the site and within 100 feet of the site at two foot contour intervals, referenced to a U.S.G.S. benchmark.
4. Proposed site plan features, including buildings, roadway widths and names, and parking areas.
5. Dimensions and centerlines of existing and proposed roads and road rights-of-way.
6. Acceleration, deceleration, and passing lanes, where required.
7. Proposed location of driveway entrances and on-site driveways.
8. Typical cross-section of proposed roads and driveways.
9. Location of existing drainage courses, floodplains, lakes and streams, with elevations.
10. Location and dimensions of wetland areas. If deemed necessary because of site or soil conditions or because of the scope of the project, a detailed hydrology study may be required.
11. Location of sidewalks within the site and within the right-of-way.
12. Exterior lighting locations and method of shielding lights from shining off the site.
13. Trash receptacle locations and method of screening, if applicable.
14. Transformer pad location and method of screening, if applicable.
15. Parking spaces, typical dimensions of spaces, indication of total number of spaces, drives, and method of surfacing.
16. Information needed to calculate required parking in accordance with Zoning Ordinance standards.
17. The location of lawns and landscaped areas, including required landscaped greenbelts.
18. Landscape plan, including location, size, type and quantity of proposed shrubs, trees and other live plant material, and method of irrigation.
19. Location, sizes, and types of existing trees five (5) inches or greater in diameter, measured at one (1) foot off the ground, before and after proposed development.
20. A summary table shall be provided as part of the landscape plan, listing the required landscaping for the project and clearly indicating how each requirement is satisfied by the plan.
21. Location and description of all easements for public right-of-way, utilities, access, shared access, and drainage.
22. Designation of fire lanes.
23. Loading/unloading area.
24. The location of any outdoor storage of materials and the manner by which it will be screened.

C. BUILDING AND STRUCTURE DETAILS

1. Location, height, and outside dimensions of all proposed buildings or structures.
2. Indication of the number of stores and number of commercial or office units contained in the building.
3. Building floor plans.
4. Total floor area.
5. Location, size, height, and lighting of all proposed signs.
6. Proposed fences and walls, including typical cross-section and height above the ground on both sides.
7. Building facade elevations, drawn to a scale of one (1) inch equals four (4) feet, or another scale approved by the Village and adequate to determine compliance with the requirements of this Ordinance. Elevations of proposed buildings shall indicate type of building materials, roof design, projections, canopies, awnings and overhangs, screen walls and accessory

building, and any outdoor or roof-located mechanical equipment, such as air conditioning units, heating units, and transformers, including the method of screening such equipment.

8. Such equipment shall be screened from view of adjacent properties and public rights of way. Such screening shall be designed to be perceived as an integral part of the building design.

D. INFORMATION CONCERNING UTILITIES, DRAINAGE, AND RELATED ISSUES

Schematic layout of existing and proposed sanitary sewers and septic systems; water mains, well sites, and water service leads; hydrants that would be used by public safety personnel to service the site; and, the location of gas, electric, and telephone lines. Location of exterior drains, dry wells, catch basins, retention/detention areas, sumps and other facilities designed to collect, store, or transport stormwater or wastewater. The point of discharge for all drains and pipes.

- E. OTHER DATA WHICH MAY BE REQUIRED.** Other data may be required if deemed necessary by the Village administrative officials, Planning Commission, or Village Council to determine compliance with the provisions in this Ordinance. Such information may include traffic studies, market analysis, environmental assessment and evaluation of the demand on public facilities and services.

Section 6.105 FINAL SITE PLAN REVIEW

PLANNING COMMISSION REVIEW OF FINAL SITE PLAN. The Planning Commission shall review the final site plan and either approve, deny or approve with conditions the final site plan based on the purposes, objectives and requirements of this Ordinance, and specifically the considerations listed above.

To insure compliance with the final site plan and any conditions imposed under the Ordinance, the Planning Commission may require that a cash deposit, certified check, irrevocable bank letter of credit or surety bond acceptable to the Planning Commission and Village Attorney covering the estimated cost of improvements associated with a project for which zoning approval is sought, be deposited with the Village Clerk to insure faithful completion of the improvements. The performance guarantee shall be filed with the Village Clerk prior to the issuance of a building permit by the Building Inspector for any portion of the project.

Each development shall be under construction within one (1) year after the date of final approval by the Planning Commission. If said applicant does not fulfill this provision, the Planning Commission may grant a sixty (60) day extension provided the applicant presents reasonable evidence to the effect that said development has encountered unforeseen difficulties but is ready to proceed. Should neither of the aforementioned provisions be fulfilled or a sixty (60) day extension has expired, without commencement of construction, the site development plan shall be null and void.

The Planning Commission shall undertake and complete all site plan reviews within sixty (60) days of submission of all required information by the applicant. Upon approval of said plan, the Chairman of the Planning Commission shall sign three (3) copies thereof. One (1) signed copy shall be made a part of the Planning Commission's files and one (1) shall be forwarded to the Zoning Official for issuance of a building permit. The third copy shall be returned to the applicant. In the case of any dispute, the signed copy of copy retained by the Planning Commission shall serve as final evidence of the decision of the Planning Commission.

The Planning Commission recognizes that not all applications to be submitted for consideration under the terms of this Article will require full compliance with the submission requirements. An applicant may propose or the Zoning Official may accept an application not fulfilling all of the submission requirements when in the opinion of the Zoning Official that the submission materials are sufficient for the Planning Commission to render a decision on the applicant's request. Upon submission of an application, the Planning Commission may request and the applicant shall provide such additional information as deemed necessary to fulfill the review and approval responsibilities of this Article.

Chapter 6.3 • SPECIAL LAND USE REVIEW

Section 6.301 PURPOSE

The procedures and standards set forth in this section are intended to provide a consistent and uniform method for review of proposed plans for special land uses.

In hearing and deciding upon special land use approvals, the Planning Commission shall base its actions on the theory that the development and execution of a comprehensive zoning ordinance is founded upon the division of the Village into districts, within which districts the use of land and buildings and the bulk and location of buildings and structures in relation to the land are substantially uniform. It is recognized, however, that there are variations in the nature of special uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts without consideration in each case of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location.

Section 6.302 APPLICATION

An application for permission to establish a special use shall be submitted in accordance with the following procedures:

APPLICATION. Applications for a special land use shall be submitted twenty days prior to the next scheduled Planning Commission meeting. Each application shall be accompanied by the payment of a fee in accordance with the schedule of fees adopted by the Village Council. No part of this fee shall be refundable.

An application for a special land use permit shall be accompanied by the following information:

- A. A completed application form.
- B. A site plan, as specified in Article 6, Chapter 2.
- C. Other information which the Planning Commission may reasonably deem necessary for review.

PUBLIC HEARINGS. The Village shall schedule a public hearing in accordance with Article 6, Chapter 7.

Section 6.303 PLANNING COMMISSION REVIEW AND DETERMINATION

Following the public hearing, the Planning Commission shall review the special land use application, together with the public hearing findings and reports / recommendations of the Village Planner, Building Official, the Police and Fire Department, the Village Engineer, and any other reviewing agencies. The Planning Commission is authorized to deny, approve, or approve with conditions requests for special land use approval. Such a decision shall include the standards relied upon, finding of fact, conclusions, and conditions, if any.

Section 6.304 BASIS FOR DETERMINATION

The Planning Commission shall review the particular circumstances of the special use application under consideration in terms of the special use standards, and shall approve a special land use only upon a finding of compliance with each of the following standards, as well as site plan and other applicable standards.

- A. The special land use shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area (including location, scale, and intensity).
- B. The special land use shall not change the essential use of the surrounding area.

- C. The proposed special land use shall promote the use of land in a socially and economically desirable manner. The special land use shall not adversely impact the social and economic well-being of those who will use the proposed land use or activity; residents, businesses, and landowners immediately adjacent; or the Village as a whole.
- D. The special land use shall minimize the impact of the traffic generated by the proposed use with consideration given to the following: proximity and access to major thoroughfares; number of curb cuts and shared access points; impact on traffic patterns; proximity and relation to intersections; location of and access to off-street parking; required vehicular turning movements; and pedestrian/ non-motorized traffic.
- E. The special land use shall not be hazardous to adjacent property, or involve uses, activities, materials, or equipment which will be detrimental to the health, safety or welfare of persons or property through the excessive production of traffic, noise, smoke, fumes, or glare.
- F. The special land use shall not place demands on public services and facilities in excess of current capacity.
- G. The special land use shall be compatible with the natural environment.
- H. The special land use shall be compatible with and in accordance with the general principles and future land use configuration of the Village Master Plan and shall promote the intent and purpose of this Ordinance.

Section 6.305 CONDITIONS

The Planning Commission may impose reasonable conditions with the approval of a special land use permit. Conditions imposed shall further one or more of the following criteria:

- A. Conditions shall be designed to protect natural resources, the health, safety, welfare, and social and economic well-being of those who will use the land use or activity under consideration; residents and landowners immediately adjacent to the proposed land use or activity; and the community as a whole.
- B. Such considerations may include, but are not limited to vehicular or pedestrian traffic, compatibility with the Master Plan, potential impact on surrounding land uses, off-site impacts, and aesthetic quality. Conditions shall be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
- C. Conditions shall be necessary to meet the intent and purpose of the Zoning Ordinance, related to the standards established in the Ordinance for the land use or activity under consideration, and necessary to ensure compliance with those standards.

Section 6.306 EFFECTIVE DURATION

Special land use approval shall be valid for a period of 180 days of the date of approval by the Planning Commission. After 180 days or if the use is discontinued through vacancy of the premises, lack of operation or otherwise discontinued for a continuous period of 180 days, the special land use shall lapse and be null and void.

Upon written request received by the Village prior to the expiration date, the Planning Commission may grant one extension of up to 180 days, provided that the approved special land use exception conforms to current Zoning Ordinance standards.

Section 6.307 AMENDMENT

When an application is received to expand or change the use, traffic pattern, or other elements of a special land use, the application shall be subject to the same procedures followed for an original special land use approval.

Section 6.308 REVOCATION

Approval of a special land use and site plan may be revoked by the Planning Commission if it is found that it no longer meets the standards of this Ordinance. The special land use shall be placed on the Planning Commission agenda and written notice to the applicant shall be given at least fifteen days prior to the meeting.

Chapter 6.4 • AMENDMENTS

Section 6.401 INITIATION OF AMENDMENT

The Village Council may, on its own motion, by the Planning Commission, or on petition, amend, supplement, modify, or change this Ordinance in accordance with the authority of Public Act 110 of 2006, as amended.

Section 6.402 AMENDMENT PROCESS

The amendment and application materials shall be prepared in accordance with the following provisions:

- A. APPLICATION.** An application (on a form provided by the Village), shall be filed with the Zoning Official, who shall transmit the application to the Planning Commission, if the application did not originate from the Planning Commission.
- B. TECHNICAL REVIEW.** Prior to the Planning Commission consideration, the proposed amendment and application materials shall be distributed to appropriate Village staff, applicable outside agencies, and designated consultants for review.
- C. PUBLIC HEARING.** A public hearing shall be held for all proposed amendments in accordance with Article 6, Chapter 7.
- D. PLANNING COMMISSION CONSIDERATION.** Following the public hearing, the Planning Commission shall review the proposed amendment application, together with any reports / recommendations from staff, consultants, other reviewing agencies, and public comments. The Planning Commission shall identify and evaluate all factors relevant to the petition, including the *Criteria for Amendments*, as listed in Article 6, Chapter 4, and report its findings and recommendation to Village Council.
- E. VILLAGE COUNCIL DECISION.** Upon receipt of the report and recommendation from the Planning Commission, the Village Council may approve or deny the proposed amendment. If determined to be necessary, the Village Council may refer the amendment back to the Planning Commission for further consideration. In the case of an amendment to the official Zoning Map, the Village Council shall approve or deny the amendment, based upon its consideration of the criteria of this Chapter.

Section 6.403 RE-APPLICATION

Whenever an application for an amendment to this Ordinance has been denied by Village Council, a new application for the same amendment shall not be accepted by the Planning Commission for consideration for a period of 180 days, unless the Planning Commission determines that one or more of the following conditions has been met:

- A.** There is a substantial change in circumstances relevant to the issues or facts considered during review of the application that might reasonably affect the decision-making body's application of the relevant review standards to the development proposed in the application.
- B.** New or additional information is available that was not available at the time of the review that might reasonably affect the decision-making body's application of the relevant review standards to the development proposed.
- C.** The new application is materially different from the prior application.

Section 6.404 CRITERIA FOR AMENDMENTS

In considering any an amendment to the official zoning Map, the Planning Commission and Village Council shall consider the following criteria in making its findings, recommendations, and decision:

- A. Consistency with the goals, policies and objectives of the Master Plan and any sub-area plans. If conditions have changed since the Master Plan was adopted, consistency with recent development trends in the area shall be considered.
- B. Compatibility of the site's physical, geological, hydrological, and other environmental features with the uses permitted in the proposed zoning district.
- C. Compatibility of all the potential uses allowed in the proposed zoning district with surrounding uses and zoning in terms of land suitability, impacts on the environment, density, nature of use, traffic impacts, aesthetics, infrastructure and potential influence on property values.
- D. The capacity of Village's utilities and services sufficient to accommodate the uses permitted in the requested district without compromising the health, safety and welfare of the Village.
- E. The capability of the street system to safely and efficiently accommodate the expected traffic generated by uses permitted in the requested zoning district.
- F. The boundaries of the requested rezoning district are reasonable in relationship to the surroundings and construction on the site will be able to meet the dimensional regulations for the requested zoning district.
- G. If a rezoning is appropriate, the requested zoning district is considered to be more appropriate from the Village's perspective than another zoning district.
- H. If the request is for a specific use, rezoning the land is considered to be more appropriate than amending the list of permitted or conditional uses in the current zoning district to allow the use.
- I. The requested rezoning will not create an isolated or incompatible zone in the neighborhood.

Section 6.405 CONDITIONAL REZONING

- A. The Village Council, following a public hearing and recommendation by the Planning Commission, may approve a petition for a rezoning with conditions requested by a property owner. The standards of this section shall grant a property owner the option of proposing conditions for the development and use of property in conjunction with an application for rezoning. Such conditions may be proposed at the time the application for rezoning is filed, or at a subsequent point in the process of review of the proposed rezoning.
- B. **CONDITIONAL REZONING AGREEMENT.** The conditions attached to the rezoning shall be set forth by submitting a conditional rezoning agreement listing the proposed conditions. A conditional rezoning agreement shall contain the following information:
 - 1. A statement acknowledging that the rezoning with conditions was proposed by the applicant to induce the Village to grant the rezoning, and that the Village relied upon such proposal and would not have granted the rezoning but for the terms spelled out in the conditional rezoning agreement; and, further agreement and acknowledgment that the conditions and conditional rezoning agreement are authorized by all applicable state and federal laws and constitutions, and that the agreement is valid and was entered into on a voluntary basis, and represents a permissible exercise of authority by the Village.
 - 2. Agreement and understanding that the property in question shall not be developed or used in a manner inconsistent with the conditional rezoning agreement.

3. Agreement and understanding that the approval and conditional rezoning agreement shall be binding upon and inure to the benefit of the property owner and Village, and their respective heirs, successors, assigns, and transferees.
4. The date upon which the rezoning with conditions becomes void, as specified in below. If an extension of approval is granted by the Village Council, a new conditional rezoning agreement with the new expiration date shall be recorded.
5. Agreement and understanding that, if a rezoning with conditions becomes void in the manner provided below, no development shall be undertaken or permits for development issued until a new zoning district classification of the property has been established.
6. Agreement and understanding that each of the requirements and conditions in the conditional rezoning agreement represents a necessary and reasonable measure which, when considered with all other conditions and requirements, is roughly proportional to the increased impact created by the use represented in the approved rezoning with conditions, taking into consideration the changed zoning district classification and the specific use authorization granted.
7. A legal description of the property affected by the rezoning with conditions.
8. Development regulations affected by the conditions of rezoning, including but not limited to density, setbacks, height, site coverage, signs, parking, architecture, etc.
9. Revocation of approval provisions returning the property to its original zoning designation if the developer violates the terms of the agreement.
10. A conditional rezoning agreement may contain a conditional rezoning plan as an attachment, with such detail and inclusions proposed by the applicant and approved by the Village Council in accordance with this Section, following recommendation by the Planning Commission. Inclusion of a conditional rezoning plan as an attachment to a conditional rezoning agreement shall not replace the requirement for preliminary and final site plan, subdivision, condominium, or special land use review and approval, as the case may be.
11. Amendment. A proposed amendment to a conditional rezoning agreement shall be reviewed and approved in the same manner as a new rezoning with conditions.
12. Period of approval. Unless extended by the Village Council for good cause, the rezoning with conditions shall expire following a period of two (2) years from the effective date of the rezoning unless bona fide development of the property pursuant to approved building and other permits required by the Village commences within the two-year period and proceeds diligently and in good faith as required by ordinance to completion.
13. Expiration. In the event bona fide development has not commenced within two years from the effective date of the rezoning, the rezoning with conditions and the conditional rezoning agreement shall be void and of no effect. The landowner may apply for a one-year extension one time. The request must be submitted to the Village clerk before the two-year time limit expires. The landowner must show good cause as to why the extension should be granted.
14. Effect of expiration. If the rezoning with conditions becomes void in the manner provided in this section, either or both of the following actions may be taken:
 - i. The property owner may seek a new rezoning of the property; and/or

- ii. By the automatic reverter set forth in MCL 125.584g, the land shall revert to its former zoning classification upon the approval of a resolution by the Village Council.
- 15. Zoning map. If approved, the zoning district classification of the rezoned property shall consist of the district to which the property has been rezoned accompanied by a reference to "CR Conditional rezoning." The zoning map shall specify the new zoning district plus a reference to CR. By way of example, the zoning classification of the property may be "C-1 district with CR conditional rezoning," with a zoning map designation of "C-1 CR."
- 16. Review and approval process. An application for a rezoning with conditions shall be reviewed following the same process and procedures applicable to a rezoning set forth in Article 6 with the exception that the conditional rezoning agreement shall be executed between the applicant and the Village Council at the time of Village Council approval of a rezoning with conditions.
- 17. Recordation of a conditional rezoning agreement. A rezoning with rezoning conditions shall become effective following publication in the manner provided by law, and after recordation of the conditional rezoning agreement with the county register of deeds, whichever is later.
- 18. Violation of conditional rezoning agreement. If development and/or actions are undertaken on or with respect to the property in violation of the conditional rezoning agreement, such development and/or actions shall constitute a nuisance per se. In such case, the Village may issue a stop work order relative to the property and seek any other lawful remedies. Until curative action is taken to bring the property into compliance with the conditional rezoning agreement, the Village may withhold, or, following notice and an opportunity to be heard, revoke permits and certificates in addition to or in lieu of such other lawful action to achieve compliance.

Chapter 6.5

• VARIANCES, WARRANTS & APPEALS

Section 6.501 Standards for Approval

The Board of Appeals shall consider the following standards with respect to the application:

- A. That the application demonstrated special conditions and circumstances which exist that are particular to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.
- B. That the literal interpretation of the provisions of this Ordinance would deprive the applicant of right commonly enjoyed by other proprietaries in the same district under the terms of this Ordinance.
- C. That the special conditions and circumstances do not result from the actions of the applicant.
- D. That issuance of a variance would not validate the use of an existing nonconforming of building, structure or use land as it currently exists.
- E. That the variance requested is the minimum variance which would make possible reasonable use of the land, buildings or structures.
- F. That the Board of Appeals can issue a statement of positive findings that the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- G. The Board of Appeals has established such appropriate conditions and safeguards to assure conformity with the terms of this Ordinance which shall be attached as conditions of the variance.

Section 6.503 Abandonment of a Board of Appeals Action

If any appeal or variance is not put into effect within six (6) months of the date of approval by the Board, is discontinued through vacancy of the premises, lack of operation or otherwise for a continuous period of six (6) months, then the special permit or variance shall lapse and be null and void. Future use of said property shall conform in its entirety to the provisions of this Ordinance; however, the Board of Appeals, for good cause, may grant an extension of time, not to exceed six (6) months, to comply or to continue such special permit or variance if, in its judgment, such extension is necessary in order to avoid injustice or undue hardship to the owners of the property.

Chapter 6.6 • NONCONFORMITIES

Section 6.601 INTENT

Nonconformities are uses, structures, buildings, or lots which do not conform to one or more provisions or requirements of this Ordinance or a subsequent amendment, but which were lawfully established prior to the time of adoption of the Ordinance or amendment. Such nonconformities are declared by this Ordinance to be incompatible with the current or intended use of land in the district in which they are located.

It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their continuation. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Accordingly, the purpose of this section is to establish regulations that govern the completion, restoration, reconstruction, extension, and/ or substitution of nonconformities, and to specify the circumstances and conditions under which nonconformities shall be permitted to continue.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such work shall be deemed to be actual construction, provided that such work shall be diligently carried on until completion of the building involved.

Section 6.602 REPAIR AND ALTERATION OF NONCONFORMING USES

Maintenance and repairs of a building or other structure continuing a nonconforming use are permitted provided that such repairs do not extend the area or volume of space occupied by the nonconforming use, except as provided in Section 6.605.

Section 6.603 NONCONFORMING RESIDENTIAL DWELLING ALTERATION PERMITTED

A building or other structure containing residential nonconforming uses may be altered in any way to improve its livability provided that no such alteration may be made which will increase the number of dwelling units or volume of the building.

Section 6.604 CHANGE OF USE

A nonconforming use may be changed only to a conforming use. A nonconforming use may not be extended to displace a conforming use, nor may a building or structure regardless of the conformity or ownership, be combined with another building or structure, for the purpose of extending an existing nonconforming use or creating a different nonconforming use.

Section 6.605 ENLARGEMENT

A nonconforming use, building, or structure may be enlarged up to but no more than twenty-five (25) percent of its floor area as it existed at the date of adoption of the Ordinance amendment. Any such enlargement(s) must conform to all other Ordinance and / or regulations governing the district in which it is situated. This provision may be employed any number of times provided that the total enlargement(s) of the building or structure does not exceed the twenty-five (25) percent limitation as herein set forth. A Notice of Zoning Nonconformance shall be issued to show the size of such enlargement(s) at the date construction commenced and for each amendment thereto approved pursuant to this section.

Section 6.606 RESTORATION OF NONCONFORMING USE

A nonconforming building or structure damaged by fire, casualty, or other catastrophe in excess of fifty (50) percent of the structure's pre-catastrophe fair market value (as determined by the Assessor) may be restored, reconstructed and used as before provided that the volume of such use, building or structure shall not exceed, subject to the provision of this Section, the volume which existed prior to such damage and that any such restoration or reconstruction be substantially completed with-in one year or the occurrence of the damage.

Section 6.607 TIME OF TERMINATION

A nonconforming use shall be deemed to be permanently discontinued when such use has been discontinued or when there is evidence that the use and / or structure has been abandoned, such a prolonged vacancy, delinquent taxes, or other indicators, in excess of one (1) year.

Section 6.608 NONCONFORMING LOTS IN RESIDENTIALDISTRICTS

A single-family detached dwelling may be erected on a vacant lot located in a residentially zoned district allowing the construction of a single-family dwelling, provided such lot was nonconforming on February 14, 1974 provided the dwelling conforms to the yard setback requirements:

- A. **FRONT YARD.** The front yard shall conform to front yard setback requirement of the subject district.
- B. **SIDE YARD.** There shall be a side yard of no less than five (5) feet.
- C. **SIDE YARD STREET FRONTAGE.** The side yard shall be not less than twenty (20) feet.
- D. **REAR YARD.** There shall be a rear yard no less than eight (8) feet.

Section 6.609 VILLAGE REMOVAL OF NONCONFORMING USES AND STRUCTURES

In order to accomplish the elimination of nonconforming uses and structures which constitute a nuisance or are detrimental to the public health, safety and welfare, the Village, pursuant to Public Act 110 of 2006, as amended, may acquire by purchase, condemnation or otherwise, private property for the purpose of removal of the nonconformity.

Chapter 6.7 • PUBLIC HEARING PROCESS

Section 6.701 PURPOSE

This Chapter shall present the basic provisions which shall apply to the following applications that require a public hearing: Amendments (including Rezoning), Variances / Warrants, and Special Land Uses.

Section 6.702 PUBLIC NOTICE

The following public notice procedure shall apply for any public hearing:

A. NOTICE CONTENTS. The notice shall contain the following information, where applicable:

- i. A description of the nature of the application and the purpose of the public hearing;
- ii. A statement indicating the applicable sections of the Zoning Ordinance;
- iii. A legal description and, when known, the address of the property;
- iv. A statement of when and where the public hearing will be held;
- v. A statement of when and where written comments can be sent concerning the application.

B. NEWSPAPER PUBLICATION AND WRITTEN NOTIFICATION. The general requirements for newspaper publication and written notification shall be as indicated in the following table:

Table 6.1: Public Notice Requirements

Action Requested	Newspaper Publication Requirement	Written Notification Requirements
Adoption of a New Zoning Ordinance (1, 6)	Notices of public hearings must be published in a newspaper of general circulation within the Village not less than 15 days prior to the date of the hearing.	5
Ordinance Amendment (1, 7)		5
Rezoning (1, 7) ²¹		See footnote
Special Land Use		3
Variance / Warrant (2)		4

FOOTNOTES

1. The Planning Commission must hold at least one public hearing.
2. The Zoning Board of Appeals must hold a public hearing.
3. Notices must be mailed to owners and occupants of all properties and structures within 300 feet of the subject site, including those outside of the Village, if applicable. Notices must be postmarked not less than 15 days prior to the date of the hearing.
4. Notification of a dimensional variance request must be sent by mail to the owners and occupants of all property and structures within 300 feet of the subject site, including outside of the Village if applicable. Notification of an ordinance interpretation or decision appeal need not be sent by mail to surrounding property owners and occupants unless the interpretation or decision appeal involves a specific parcel, in which case notification must be sent by mail to the owners and occupants of all property within 300 feet of the subject site. Notices must be postmarked not less than 15 days prior to the date of the hearing.
5. Notice must be mailed to each electric, gas and pipeline utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and each airport manager, that has registered its name and mailing address with the Clerk to receive such notice. Notices must be postmarked not less than 15 days prior to the date of the hearing.
6. A property owner may request by certified mail, addressed to the Clerk, that the Village Council hold a public hearing to hear comments on a proposed ordinance provision (adoption of a new ordinance, ordinance amendment, or rezoning). Newspaper publication and written notification requirements shall be made as set forth in this Section for the corresponding type of proposed ordinance provision. It shall be the responsibility of the property owner requesting the public hearing to pay for the costs incurred by the Village for notification of the public hearing.

²¹ For a rezoning, if 10 or fewer adjacent properties are involved, notice must be sent by mail to the owners and occupants of all property and structures within 300 feet of the subject site, including those outside of the Village, if applicable. If 11 or more adjacent properties are involved, no additional notification is necessary and addresses may be omitted from the notice published in the newspaper. Notices must be postmarked not less than 15 days prior to the date of the hearing.