

ARTICLE XVI SPECIAL PROVISIONS

Section 16.01 - Lots Without Municipal Utilities. Notwithstanding any other provision of this Ordinance, any lot not served by a public water and/or sanitary sewer system may not be less than eighty (80) feet wide at the street line and not less than twelve thousand (12,000) square feet in area per dwelling unit. Prior to the issuance of a building permit for construction of a dwelling unit on any lot not served by a public water and/or sanitary sewer system, a permit for the installation of a well and/or on-site sanitary sewer system issued by the Berrien County Health Department must be presented to the Zoning Administrator.

Section 16.02 - Bed & Breakfast Operations. Because many older, single family homes are larger and represent sizeable maintenance and energy costs for a single family, it is feared that restriction to only single family use may foster inadequate maintenance or even abandonment. The possible consequences may be a general appearance of blight which, if allowed to proceed in a downward trend, could erode the social stability of a neighborhood. Based upon the above, some areas are regarded as conducive for limited use for bed and breakfast purposes; but only when certain conditions as may be required by the Planning Commission in order to preserve the character, as well as health, safety and welfare of the neighborhood are met.

- I. Bed and breakfast operation shall be subject to the following special provisions:
 - A. A residential structure shall not have or be converted to more rental rooms than the number of bedrooms which exist at the time of enactment of this Ordinance and adequate living space must be preserved for manager or owner's quarters. A common room for guest relaxation is required in these facilities. Unless owner occupied, the manager must reside on and have more than a nominal equity interest in the premises.
 - B. Off street parking for one vehicle for each bedroom to be rented must be available in addition to requirements for residential family vehicles.
 - C. Bathrooms must be furnished for guestrooms - One bathroom not to serve over four guestrooms.
 - D. No separate cooking facilities are required for bed and breakfast operation if continental breakfast is served.
 - E. One sign, in residential areas shall be permitted. Size, location and design to be authorized by Planning Commission pursuant to Article XVIII.
 - F. Inspection and approval by the Zoning Administrator is required prior to occupancy of bed and breakfast facilities. Berrien County Health Department approval is required if other than continental breakfast is planned.
 - G. The letting of bed and breakfast rooms shall be limited to short term occupancy not to exceed thirty (30) continuous days.
2. A residence must contain a minimum of two thousand four hundred (2,400) square feet of liveable floor space to be converted into a bed and breakfast facility.

Section 16.03 - Communication and Other Towers.

1. **Intent To Provide for Wireless Communication Services** It is the intent of this section to allow communication and other similar towers to serve the ever changing technology in the field of personal and business communications for wireless communications as defined in the Telecommunications Act of 1996 which includes Federal Communications Commission (FCC) licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced

specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed. The term tower shall include all communication towers, other antenna support structures, antennas, buildings/facilities and any similar structures necessary for the provision of wireless communication services.

2. **Policy of Collocation of Antenna and Antenna Arrays on Existing Structures.**

It is the policy of the Village to encourage the collocation of antenna and antenna arrays on existing Village owned structures including existing water towers, communications towers and location of any new tower upon land owned by the Village; specifically at the Public Works facility. Location of an antenna /antenna array and related equipment shall be permitted as a special use pursuant to the provisions of this Ordinance. A proposal for the location of a new tower or communication structure for the purpose of collocation of wireless communication antenna/antenna arrays which meets the locational requirements and construction standards set forth in paragraph 4, below, may be permitted as a special use issued by the Zoning Board of Appeals only on land owned by the Village as prescribed above or as prescribed in the following subsections.

3. **Restriction Upon the Location of New Towers Unless Standards Are Met.**

It is a policy of the Village to prohibit the location of any additional towers or other communication support structures within Village limits unless the applicant can demonstrate to the reasonable satisfaction of the Planning Commission, the Zoning Board of Appeals and the Village Council that the following conditions exist and the location of the proposed tower or other communication support structure meets the locational requirements and construction standards as set forth in paragraph 4, below:

- A. There is no existing tower or other communication support structure located within the Village limits for which the applicant's proposed antenna or antenna array can be attached which meets the applicant's engineering requirements.
- B. There is no existing tower or other support structure located within the Village having sufficient height to meet the applicant's engineering requirements.
- C. There is no existing tower or other support structure located within the Village having sufficient structural strength to support the applicant's proposed antenna or antenna array.

4. **Location Requirements, Construction Standards and Other Conditions.**

All newly constructed towers, communication support structures and any related equipment shall conform to the following locational requirements, construction standards and other conditions as follows:

- A. Towers, not otherwise permitted in section 2 above, shall be allowed as a special use in industrial zoning districts.
- B. The minimum lot size shall be one (0.5) acre of land area. All lots shall have a minimum of one hundred twenty five (125 feet) of road or street frontage.
- C. The base of the tower or other communication structure shall be of the self-supporting pole type and not be of the construction which require cable support of any type.
- D. The tower must be setback from all property lines a distance equal to its height, unless engineering plans and specifications have been verified by the Village Engineer that the structural integrity of the tower will withstand the maximum high wind velocity for the area, as reported by a nationally recognized weather service or Village Building Code specifications, and associated impacts, and the likelihood of a tower failure is minimal.
- E. Accessory structures are limited to uses associated with the operation of the tower and may not be located any closer to any property line than forty (40) feet.

- F. Accessory structures shall not exceed six hundred (600) square feet of gross building area.
- G. All other requirements of the zoning district in which the tower is located shall be enforced.
- H. Security to prevent unauthorized access shall be provided for all fence and building enclosures. A written agreement with the Fire Department concerning access for fire safety shall be provided to the Village prior to approval of the special use.
- I. Engineering plans and specification for the tower, prepared by a State of Michigan Registered Engineer specializing in structural engineering, shall be provided with the application for the special use.
- J. Engineering plans and specifications for the tower mounting foundation and the foundation for any structure shall be prepared by a State of Michigan Registered Engineer. These shall be accompany the application for the special use. Engineering plans shall including soil boring information for the site of the tower mounting foundation and any other foundation in excess of four (4) feet in depth. The applicant shall provide a statement signed by a State of Michigan Registered Professional Engineer that soil conditions have been determined suitable for the tower mount foundation.
- K. The applicant shall provide inspection and verification that the installation of the tower, mount and foundation have been installed in compliance with the plans and specification and all applicable codes and standards. A statement, include the date of the physical inspection, from a State of Michigan Registered Professional Engineer shall be provided to the Village Building Inspector prior to the issuance of a Certificate of occupancy for use of the tower indicating that the tower has been installed in compliance with all applicable codes and standards.
- L. All towers shall meet the standards of the Federal Aviation Administration, Federal Communications Commission and any other applicable regulatory State of Michigan or Federal Agency.
- M. Communication towers in excess of one hundred (100) feet in height above grade level shall be prohibited within a two (2) mile radius of a public or private airport or helipad.
- N. No part of any tower shall be constructed, located or maintained at any time, permanently or temporarily, on or upon any required setback area for the district in which the tower will be located. In no case shall a tower be located within forty (40) feet of a property line.
- O. Metal towers shall be constructed of, or treated with, corrosive resistant material acceptable to the Village.
- P. Towers shall be grounded for protection against a direct strike by lightning and shall comply as to electrical wiring and connections with all applicable local statutes, regulations and standards.
- Q. All attachments to any tower shall be designed to withstand a the maximum uniform wind loading as prescribed in the Village Building Code. A statement signed by a State of Michigan Registered Professional Engineer shall be provided to the Village Building Inspector certifying that the tower has been designed in conformance with applicable Village Building Code wind load requirements.
- R. All signals and remote control conductors extending substantially horizontally above the ground between the tower and a structure, or between towers, shall be at least eight (8) feet above the ground at all points, unless buried underground.
- S. Towers shall be located so there is room for vehicles doing maintenance to maneuver on the property owned or leased by the applicant, including fire safety equipment.

- T. The base of the tower shall occupy no more than five hundred (500) square feet of area.
- U. Minimum spacing between tower locations shall be one-half (½) mile in order to prevent a concentration of towers in one area.
- V. Height of the tower shall not exceed three hundred (300) feet and no tower located within five hundred (500) feet of any residential area shall exceed one-hundred-seventy-five (175) feet in height from grade.
- W. Towers shall not be artificially lighted unless required by the Federal Aviation Administration.
- X. Existing on-site vegetation shall be preserved to the maximum extent possible.
- Y. There shall not be displayed advertising or identification of any kind intended to be visible from the ground mounted on the tower or other structures, except for emergency purposes.
- Z. Any attachments to the tower shall be painted to match the exterior treatment of the tower. The chosen paint scheme should be designed to minimize off-site visibility of the tower as determined by the Village Zoning Administrator.
- AA. All structures shall be subject to any state and federal regulations concerning non-ionizing electromagnetic radiation. If more restrictive state or federal standards are adopted in the future, the tower shall be made to conform to the extent required by such standards or the special use approval will be subject to revocation by the Village Council. Costs for testing and verification of compliance shall be born by the owner of the tower.
- BB. There shall be no employees located on the site on a permanent basis to service or maintain the tower or attachments, unless specifically approved as part of the special use approval. Occasional or temporary repair and service activities are excluded from this restriction.
- CC. All parking and drive areas must be paved with material meeting the standards of the Village.
- DD. A vegetative buffer shall be required where the property adjoins any residentially zoned property or land use. The tower owner shall plant and maintain two (2) alternating rows of evergreen trees with a minimum height of five (5) feet on twenty (20) foot centers along the entire perimeter, and twenty (20) feet beyond but not further than the property line, of the tower and structure, to provide a visual sight barrier from the adjoining residential zoned properties and the tower and structures. In no case shall the evergreens be any closer than ten (10) feet to the tower or structure.

5. Process for Obtaining Approval for Location of New Towers

An applicant seeking approval for the location of a new tower shall prepare and present a complete application to the Planning Commission who shall review the application, hold any required public hearings, issue findings and make recommendations concerning the proposed location and compliance with the standards above. A copy of the Planning Commission report shall be filed with the Village Council who shall review the report and formally attach any comments or issue a statement of concurrence with the Planning Commission findings and recommendations. Both the Planning Commission and Village Council reports shall be filed with the Zoning Board of Appeals and considered as part of the deliberations concerning the issuance of a Special Land Use Permit.

6. Additional Requirements

- 1). The tower shall be removed by the property owner or property lessee within six months of being abandoned.
- 2). The notice of the abandonment of the tower shall be provided to the Village ninety (90) days prior to abandonment.

- 3). The applicant shall incur all cost associated with the Village review of the application for the special use.
- 4). The applicant shall provide a performance bond or irrevocable letter of credit, in such form as approved by the Village Attorney, in an amount equal to the estimated cost to remove the tower, but in no case less than \$50,000, to be used by the Village to remove the tower if said tower is abandoned and not removed in accordance with the terms of this ordinance, by the applicant, successors and/or property owner.
- 5). Upon approval or upon meeting all of the standards and qualifications set forth above, the applicant shall provide to the Village or the owner of the proposed and approved site a lease agreement or other suitable legal document setting forth the terms and conditions for the use of the site. If Village-owned property is involved, the lease shall be reviewed by the Village Attorney. Applicants shall reimburse the Village or its legal expense, not to exceed \$1,500.00. The terms and conditions of any agreement with respect to -owned property shall be approved by the Village Council. In the case of privately-held property, it shall be the responsibility of the applicant to obtain an agreement with the property owner with respect to the use of the proposed site. The applicant is required to file any such agreement with the Village Clerk.

Section 16.04 - Commercial/Industrial Minimum Landscaping Regulations and Standards.

In the C-1 Commercial and I Industrial Zoning districts, a minimum of fifteen (15) percent of the total lot area shall be landscaped containing one (1) shrub for every 1,000 square feet or portion thereof, plus one (1) tree for every 1,500 square feet of landscaped area or portion thereof. (Plant materials existing on the site prior to the development may be included as part of the requirement) Ground cover is required in all landscaped areas. Landscaping of adjacent rights-of-way area shall be included in satisfying the minimum on-site requirement if it is maintained by the abutting property owner. A minimum of thirty-three (33) percent of required landscape area shall be located between any building and the street.

Section 16.05 - Storage and Screening Required in Commercial and Industrial Districts. In addition to other provisions of this Ordinance every application for a building permit in the C-Commercial and I Industrial zoning districts shall provide a plan for outdoor material storage and screening so as to eliminate unsightly open storage of material equipment and supplies. Each application for a permit shall also provide for appropriate landscaping and planting so as to improve and preserve the physical appearance of the district. Any landscaped area required shall thereafter be preserved, as far as it is practicable to do so, and used maintained and reserved for grass, trees, shrubs and similar ornamental landscaping.

All screening shall comply with the following standards:

1. Adequate screening shall consist of a four (4) to six (6) feet high solid fence, or similar visual screen of suitable shrubs, spaced at intervals of nor more than four feet, maintained within fifteen (15) feet of the property line separating the uses.
2. All fences, hedges, walls, and shrubs must be maintained in good condition. No advertising shall be permitted on fences adjoining residential districts.
3. Fences, walls, and hedges under six (6) feet may be located in any yard or court, except as regulated by Article XV, Section 15.10.

Section 16.06 - Display of Goods & Merchandise in C-1 and C-2 Commercial Districts. All merchants and businesses located within the C-1 and C-2 Commercial districts shall maintain a five (5) foot width of continuous free and clear passage for safe pedestrian traffic from the backside of the curb, and at no time shall any merchant or other person be allowed to occupy more than fifty (50) percent of the sidewalk for displaying goods, wares and merchandise.

Section 16.07 - Encroachment into Required Front, Side and Rear Yards. No portion of the building or any appurtenance shall encroach into a required front, side or rear yard, including steps, porches, covered walkways, ramps, gutters, awnings, signs, roof overhangs, structural or nonstructural cantilevers, or any permanent or temporary, fixture attached to any principal use building or accessory use structure. The Zoning Board of Appeals may vary the terms of this requirement upon finding that 1) compliance with the strict terms of this provision applies an undo hardship upon the property owner and that such hardship is specific and unique to the subject property, 2) that the variance is required to use the subject property in a similar fashion as other properties in the

immediate area, and 3) that the requested variances is determined to be the minimum variance from the strict terms of the ordinance necessary to provide equal use of the subject property when compared to the properties in the immediate area.

A variance may be granted from the strict terms of this section for an applicant to provide a ramp necessary to access any principal residential or other structure to comply with the Americans with Disabilities Act requirements. Standards for granting a variance shall include a first preference for installation of such ramps in the rear or side yards. Granting a variance for installation of a ramp in the front yards shall only be considered in cases where no side or rear access can be obtained in compliance with accessible ramp construction requirements.