

**PENINSULA TOWNSHIP
SPECIAL MEETING
PLANNING COMMISSION
AGENDA**

13235 Center Road
Traverse City, MI 49686
July 18, 2016
5:30 PM
Township Hall

1. **Call to Order**
2. **Pledge**
3. **Roll Call**
4. **Approve Agenda**
5. **Brief Citizen Comments – for items not on the Agenda**
6. **Conflict of Interest**
7. **Consent Agenda**

Any member of the Board, staff, or the public may ask that any item on the Consent Agenda be removed and placed elsewhere on the agenda for full discussion.

- a. Correspondence (as provided)
- b. Minutes – June 20, 2016 Special Meeting

8. New Business

- a. Peninsula Township Zoning Ordinance DRAFT: Section 3.117 Neighborhood Overlay District and Article 7 (Discussion)

9. **Citizen Comments**
10. **Board Comments**
11. **Adjournment**

Peninsula Township has several portable hearing devices available for use during this meeting. If you would like to use one, please contact the Chairperson.



Michelle Reardon
Peninsula Township Director of Planning & Zoning

Posted: July 12, 2016

**PENINSULA TOWNSHIP PLANNING COMMISSION
SPECIAL MEETING
June 20, 2016
5:30 P.M.**

Meeting called to order at 5:30 p.m.

Present: **Wunsch; Peters; Couture** (arrived at 5:39 p.m.) **Hornberber; Serocki; Rosi** (arrived at 5:37); *Leak*-Chair
Also present were Michele Reardon, Director of Zoning and Planning; Peter Wendling, Township Attorney; via skype Patrick J. Sloan, McKenna & Associates and Mary Ann Abbott, Recording Secretary

Approve Agenda

MOTION: Hornberger/Wunsch to approve the agenda with the addition of two correspondence items: Mary Swift and Cindy Luczak.

PASSED UNAN

Brief Citizen Comments – for items not on the Agenda

Louis Santucci, 12602 Center Road trying to figure out how entire Zoning package relates to Amendment 190? *Reardon* responds that Amendment 190 was passed by the Town Board however the B& B portion was taken off. That portion will be sent back to the Planning Commission. Amendment 190 amends our current Zoning Ordinance. What you are working on tonight is a Zoning Ordinance more in keeping with enabling legislation as well as using the Master Plan to guide the regulations in that document. *Santucci* So if the B& B portion of 190 is going back to the Planning Commission will the public have an opportunity to comment. **Leak** answers Yes.

David Taft, 952 Nehtawanta expressed concerns over the "81" development and the possibility of arsenic and lead poisoning due to the fact that it had been a cherry orchard. He urges the Township to use due care in requiring an environmental assessment of this property.

Nancy Kahn, 14890 Shipman would like to comment on Article 2 Definition 115 that is "Site Area". The question is whether you can use Road Right of Way to calculate lot size. There is a question that the word "excluded" has been changed to "included". She wanted to bring this to the attention of the Commission and suggests that it may be appropriate to deliberate on this topic.

Anne Rogers, 1236 Peninsula Drive, representing NMEAC (Northern Michigan Environmental Action Council) is concerned about the water and air, tree cutting, erosion and the impact on the water. Also about the pesticides and herbicides that had been used on the property. She is asking for an independent environmental assessment.

Jim Komendera, 4168 Rock Shore, President of Preserve Old Mission has environmental concerns about "81". The cherry orchards were exposed to pesticides and fertilizers that were legal at the time but phased out in the 1950's. Suggests a soil test on the property before soil is moved.

Margaret Achorn, 11284 Peninsula Drive would like to speak about Escrow Accounts. On 2/22/2016 the PC passed the escrow portion of Amendment 190 and sent on to the Town Board. The Town board approved this portion on June 14, 2016. At the meeting Achorn asked why the 81, Vineyard Ridge, and Tabone Winery were not billed for Gourdie Frazier fees. She was told that there was not an ordinance establishing an escrow mechanism. **Leak** we require them to post a bond. *Reardon* The amendment was just approved it was published and will be approved in 30 days after publication. Not in effect right now. At Town Board we saw there was a problem and corrected it. **Rosi** There was a system at the time of the Orchards to put money into escrow at that time.

Mark Nadowski, 10 McKinley Road representing Protect the Peninsula. He would like to bring to their attention to a 4 page document from Global Environmental and Planning and hopes that that the Board will look at this report Basically on 7/11/15 that report states that based on the application it should be denied.

Scott Howard, 420 E. Front, Attorney for Jim Komendera and Preserve Old Mission would like to have the Board keep in mind that the township has the right to require applicant to pick which particular mechanism they are using to develop their plan. He suggests that language is developed to make this clear to the applicants. Also in terms of Environmental Due Diligence that application may be required to give you reports that they have and the Township may do their own environmental analysis for Public Safety and Health.

Andris Valdmanis, 1484 Chimney Ridge has worked with the Township for over 35 years and they have been very cooperative with him. He would like to talk about Zoning and the Master Plan. Resident surveys are 10 years old and needs to be looked at. McKenna has not been inclusive of the residents. Valdmanis advocates more education, more community participation and less legislation.

Conflict of Interest

None

Consent Agenda

Any member of the Board, staff, or the public may ask that any item on the Consent Agenda be removed and placed elsewhere on the agenda for full discussion

- a. Correspondence (as provided)

MOTION: Hornberger/Serocki to approve Consent Agenda.

PASSED UNAN

New Business

Peninsula Township Zoning Ordinance DRAFT: Articles 3-4 (Discussion)

Reardon reported that Patrick Sloan from McKenna is participating via phone this evening. Sloan begins with Article 3: Zoning Districts and Maps Interpretation. Section 3.103 Interpretations of District Boundaries. Major changes are section E) Water Bodies and F) Zoning of Filled or Accreted Land.

Reardon repeats that the Planning Commission was asked to discuss if we want our Zoning Districts interpreted to the Ordinary High Water Mark or the Shoreline. Attorney Wendling is here to help us with implications. There have been issues with regulating Hoists and Docks.

Peters We are looking at Shoreline to do a couple of things. We need a difference to deal with hoists, docks and storage. This is very different than measuring the quantity of land that you own. This township needs a standard on how you measure quantity of land, but this does not say that we cannot write more.

Wendling Zoning Ordinance says now that for zoning the regulations end at the Ordinary High Water Edge. The purpose is to regulate things that are done to the water's edge such as Hoists and Docks. This is different for Land Division.

Reardon we have discovered that we cannot regulate most docks and hoists and storage of these because they are below Ordinary High Water mark. From a staff perspective when we are talking about setbacks the Ordinary High Water Mark is preferred. Is the issue about Hoists and Docks important enough to re-write the ordinance?

Peters Would like to have cake and eat it too.

Wunsch to summarize the Township would like to be able to regulate Docks and Hoists but continue to use the Ordinary High Water for measuring land division without being in conflict with the Public Access Doctrine. Is that good direction for McKenna? *Wendling* you would have to use the same way throughout.

Serocki would like to move on to F. and possible redundancy in definition.

Discussion then moved to topic of filling and treating as well as inland water and wet zones.

Reardon indicates that staff could provide board with a map of these areas.

Review of Article 3 continues. *Reardon* notes 3.106 to 3.112 give you a place to find a use but will be redone in alphabetical order.

Reardon draws attention to McKenna transmittal letter. Asks McKenna to look at comments on the Adult Foster Care and Child Care and make sure that they are up to par with the Enabling Act but not redundant.

Leak states that he has a comment on the definition of site area that includes road right away. He thinks it should exclude road right away. *Reardon* The Town Board did make a policy decision in about 2013 that the right away would be used in area Peninsula Township

calculations. The decision was made that if they own it they should use it. When we get to definitions Reardon will give the minutes to the Planning Commission.

Rosi 6/2/16 letter from McKenna takes about Ordinary High Water mark on inland ponds and would like to have McKenna look at that again

Citizen Comments

Dan Fleckenstein, 12000 Peninsula Drive hears issues of Ordinary High Water Edge. His deed goes to water's edge. The Public is represented in the Peninsula with beaches and parks. Not in the public interest to allow strangers on my property.
Hornberger The Planning Commission and the Township do not regulate this issue.

Nancy Kahn, 14890 Shipman comments on the Ordinary High Water mark. Notes that in the PUD section of the language "land below the ordinary high water mark should not be considered as part of the net acreage" and it is deleted. There is no explanation for why this came out. Asks if someone would make a motion to look into who took out the language about the high water mark in 5 101 (G) 2 and the exclusion of road right away in Definition 115 of article 2.

Margaret Achorn, 11284 Peninsula Drive requests that the document she presents be put in the minutes. That item is attached at the end of these minutes.

Joanne Westphall, 12414 Center Road states that the Zoning Ordinance was in need of revising to eliminate inconsistencies in definitions and enforcement issues. She believes that the proposed ordinance language and planning process has produced a zoning ordinance that is still too big, has been modified too fast with too little public input and does not conform to the Master Plan at all. She would like the discussion of the Ordinance rewrite to be tabled until it is convenient for the public.

MOTION: Hornberger/Wunsch to recess this meeting so that more chairs can be brought in and the 7:00 p.m. can begin shortly.

PASSED UNAN

5:30 P.M. continues with additional Citizen Comments

Susie Shipman, 14735 Shipman Road would like to support the recommendation that Zoning to apply to the waters edge. The shoreline is a mess. The Great Lakes belong to all of us and it is not every one's personal private playground. She applauds the effort. There are extra rules. The ordinance is long but she sees the value of what is happening here. We all need to share the shoreline. Also thinks that Land Division should be kept at the Ordinary High Water Mark.

No additional comments.

MOTION: Peters/Serocki to close the 5:30 p.m. meeting.

PASSED UNAN

Respectfully submitted by Mary Ann Abbott, Recording Secretary.

June 20, 2016

Margaret A. Achorn
11284 Peninsula Drive

I request that this document be placed in the meeting minutes:

This is regarding **BOUNDARIES ON THE GREAT LAKES: Proposed ARTICLE 3.103(E) (Current Ordinance Section 6.1.3(5))**

I own property on West Grand Traverse Bay and would be impacted by this proposed change. **I AM AGAINST IT.**

The Current Ordinance reads: "... the boundaries shall be the ordinary high water mark"

The Proposed Article: INSERTS: a critical additional phrase "**or the shoreline, whichever is lower**"

This additional phrase adds unnecessary and burdensome complexity to the Zoning Ordinance for several reasons:

1. **ELABORATE RECORDS** would have to be maintained for historic purposes to record lake levels every year –which would affect property sizes and assessments.
2. **HISTORICAL RECORDS –INCLUDING LAND DIVISIONS** – could be altered if it enabled Land Divisions not possible by the Ordinary High Water Mark standard used for decades.

This would be self serving to our current Township Supervisor and any discussion related to this Zoning Ordinance. I would insist that RESIDENTS demand he recuse himself from any Board discussion on this matter.

3. **This definition would ADD COMPLEXITY AND COST to existing surveys for purposes of Assessment and Land Division. The current language indicates that a Certified Survey is necessary for Land Division. **Will this enable earlier Ordinary High Water Mark Surveys and Land Divisions to be Grandfathered? Or, does this enable possible Land Divisions at a lower water level to happen****

for Grandfathered properties when the lower lake level is beneficial to increase the land size and value for the landowner?

4. If the lake level is lower, will this then encourage the Assessor to increase value? And when returning to the OHWM in future years, will the land value then be reduced by the Assessor?

THIS ADDED CLAUSE RESULTS IN COMPLEXITY AND IS BURDENSOME FOR THE TOWNSHIP TO OPERATE COST EFFECTIVELY. Even more concerning is the RECORD KEEPING of lake levels from year to year to justify the Boundary Records going forward.

PENINSULA TOWNSHIP IS NOW IN A LAWSUIT BECAUSE OF A DISPUTED LAND DIVISION BY THE TOWNSHIP SUPERVISOR. The proposed modification to the language in this Article appears to be self serving—and, maybe, in the future inure a financial benefit to the current Supervisor.

The Consultant, McKenna and Associates should be fully aware that almost all of the Townships around Grand Traverse Bay use the Ordinary High Water Mark as the Boundary Standard.

Our Township Attorney continually attempts to guide the Boards on this issue citing a “trespass” case to justify removing the Standard used on the Great Lakes for many decades – which is, **THE ORDINARY HIGH WATER MARK.**

I urge the Planning Commission to use good judgement and **NOT CHANGE** the existing definition for Water Bodies, currently in our Zoning Ordinance. The added cost for Record Keeping, Enforcement, Assessment and even Legal Defense from Lawsuits resulting from this variable definition would be **burdensome and very expensive.**

Thank you

Excerpt from McKenna Letter

Peninsula Township
Remaining Review Items of Articles 1-11
June 2, 2016 – Page 4

- **Junk Yards**, which are currently defined, have now been placed as a Special Use in the C-1 district. They are currently not permitted in any district, so this item will require discussion.
- **Winery, Use by Right (currently a “Farm Processing Facility”)** is noted as a Permitted Use in A-1.
- **Campgrounds** have been added to the **Recreational Unit Park** classification.
- **Each Zoning District has a 1-page summary (Sections 3.107-3.112)**, which includes the current intent and purpose statements, uses permitted by right and special land uses (copied from the Permitted Use Table), and dimension regulations (copied from the Schedule of Regulations). While these district summaries repeat the Permitted Use Table and Schedule of Regulations, the purpose of these 1-page summaries is to make the Zoning Ordinance more accessible and user-friendly.
- **Neighborhood Overlay District (Section 3.117)**. The purpose of the Neighborhood Overlay District is to allow smaller established lots to develop buildings that do not meet the minimum side yard setbacks or maximum lot coverage of the underlying zoning district. Based on our review of nonconforming lots in the township, the most difficult compliance standards are the minimum side yard setbacks and maximum lot coverage. A sliding scale is proposed for minimum side yard setbacks and lot coverage; therefore, larger lots must be more compliant with the lot coverage of the underlying zoning district and higher buildings must be more compliant with the side yard setbacks of the underlying zoning district.

Article 4. Schedule of Regulations.

This article is similar to the existing Schedule of Regulations. A purpose statement has been added, and the footnote related to lot width refers to the definition for consistency. As previously stated, although there are no maximum impervious surface requirements proposed, this item may be addressed in a future revision.

Article 5. Supplemental Zoning District Standards.

- **Planned Unit Developments (Section 5.101)**. Several sections of the Zoning Ordinance address PUD's, and this proposed section consolidates all of these sections. The major changes include the following:
 - A parallel plan is required at the beginning of the process and must demonstrate compliance. This will make the number of allowable units more accurate and realistic.
 - Emphasizing that the setbacks may be modified by the Township to be less than the underlying zoning district.
 - Clarified permitted housing types to explicitly include attached single-family units.
- **Site Condominiums (Section 5.102)**. Major changes include:
 - Adding requirements for initial information.
 - Deleting lot requirements that are in conflict with the Land Division Ordinance.
 - Adding general provisions for monuments, subdivision of lots, encroachments, relocation of boundaries, performance guarantees, and final documents.

Article 6. Standards Applicable to Specific Uses.

- **Junk Yard (Section 6.120).** While Junk Yards are currently defined, they are currently not permitted anywhere in the Zoning Ordinance. If the Zoning Ordinance includes Junk Yards as a use, we recommend making it a Special Use in the C-1 district and including development standards to minimize the negative impacts of the use. If Junk Yards are intended to be prohibited, we recommend adding language in the Zoning Ordinance stating so.
- **Kennels (Section 6.122).** Proposed regulations include minimum lot size, minimum setbacks, sound control, odor control, and breeding limits. Also, the proposed regulations prohibit the use in subdivisions and site condominiums.
- **Mobile Homes on Individual Lots (Section 6.125).** References to the Federal law were updated (National Manufactured Housing Construct and Safety Standards Act).
- **Recreational Unit Parks and Campgrounds (Section 6.129).** While there are current regulations for Recreational Unit Parks, Campgrounds were added to the use. Proposed changes to site development standards include additional screening, minimum recreational unit site dimensions, and public station facilities for guests.
- **Wireless Communication Facilities (Section 6.141).** The wireless communication standards of Sections 7.12 and 8.7.3(11) of the current Zoning Ordinance were merged into a single section to make administration easier. The Michigan Zoning Enabling Act was amended in 2012 to make it much easier for wireless communication providers to collocate antennas and construct new towers. At the same time, it severely limited a municipality's ability to regulate them and provide adequate time for a comprehensive review. The proposed revisions include applicable procedures based on the type of activity proposed, which is consistent with the Zoning Enabling Act. The maximum height is limited to 120 feet, design requirements were added for the tower and equipment building, and screening requirements were added. Other provisions were added for access, structural integrity, maintenance, removal, and application.

Article 7. General Provisions.

The purpose of this article is to consolidate general standards applicable throughout the township that do not fit into other articles of the Zoning Ordinance. Sections with major changes yet to be reviewed are as follows:

- **Storage of Recreational Vehicles (Section 7.103).** The Zoning Ordinance currently has no regulations on outdoor storage of recreational vehicles. We recommend minimum setback standards and requiring the vehicle to be registered to the lot owner or occupant.
- **Supplementary Height Requirements (Section 7.108).** We recommend capping ornamental structures at 50% above the maximum height, though we recommend allowing the Township to grant a Special Use permit for higher ornamental structures. We do not recommend that the ZBA grant variances for ornamental structure height because there will not likely be a practical difficulty.
- **Clear Vision Area (Section 7.112).** We recommend clear vision areas at driveway and road intersections.
- **Accessory Buildings and Structures (Section 7.113).** The ZBA has a long history of interpreting the intent of the Zoning Ordinance for accessory buildings and structures. We have included many of these provisions, with the dates cited in the margins. Although we propose that only shoreline lots be able to have detached accessory buildings in a front yard, we can remove this provision altogether if it will unnecessarily create too many nonconformities.
- **Swimming Pools (Section 7.115).** While swimming pools are also covered under the Building Code, we recommend including Zoning Ordinance regulations for setbacks, permitting, location, and barriers. While the barrier requirements are similar to the Building Code, we recommend

having them in the Zoning Ordinance in the event that the Building Code is ever amended to not require a barrier.

- **Accessory Solar Energy (Section 7.116).** With improved technology, solar energy has become more efficient and cost-effective over the years. We recommend minimal standards for roof-mounted and ground-mounted systems, such as maximum height, location, setbacks, screening, and removal. The ground-mounted systems are limited to an output of 10kW or less, so the number of panels would be limited.

Article 11. Signs.

Last summer, the United States Supreme Court decided the case of *Reed v. Town of Gilbert* where it held a municipality's sign ordinance unconstitutional because it violated the First Amendment. While the signs at issue were noncommercial signs (temporary directional signs, ideological signs, and political signs), the Court's decision impacts many other types of signs. Therefore, many of the proposed changes to the sign regulations are with respect to sign content, and we anticipate additional changes after the Township Attorney reviews the proposed article.

While many of the major changes are noted in the margins of the draft Zoning Ordinance (dated May 10, 2016), they are summarized as follows:

- **Purpose (Section 11.101).** Many items were added to the purpose statements to make them more robust by emphasizing public safety and rural character.
- **Definitions (Section 11.102).** We recommend moving the sign-related definitions from Article 2 to the Signs article. This change will make the sign definitions easier to administer. The sign definitions were grouped based on the sign type and the sign content. Although the regulations are made more content-neutral, the content-based definitions were preserved and put into a subclass as an example of a content-based standard. This way, the only content-based distinctions for signs are whether they are **commercial or noncommercial**, or **on-premise or off-premise**. However, if the definitions and regulations must be more content neutral, it will be easy to make them more content neutral based on the proposed format.
- **Substitution Clause (Section 11.103).** A substitution clause is a requirement that any lawful sign may contain noncommercial content. Therefore, commercial speech cannot be favored over noncommercial speech, which is a legal requirement based on a previous U.S. Supreme Court case.
- **Sign Measurement (Section 11.104).** We recommend being more specific regarding how sign area is measured for irregular shapes and two-sided signs.
- **Sign Placement and Design (Section 11.105).** While natural or natural appearing materials are "highly encouraged," we recommend making these materials a requirement along M-37 and "highly encouraged" elsewhere in the township. Also, we recommend minimum maintenance requirements. Finally, we recommend that the Planning Commission or Zoning Administrator review signs instead of the ZBA. However, the ZBA would still review signs where there is a variance application.
- **Prohibited Signs (Section 11.106) and Signs Permitted in All Districts (Section 11.107).** We recommend adding to the lists of Prohibited Signs and Signs Permitted in All Districts to make

Section 3.117 Neighborhood Overlay District

(A) Purpose. There are small, established neighborhood areas in Peninsula Township with residential lots that do not meet the minimum lot area and/or lot width of the underlying zoning district; thus, in many cases residential buildings cannot be constructed on these neighborhood lots without variance approvals from the Zoning Board of Appeals. In general, such issues can often be resolved by granting variances, rezoning the lot(s) to a more suitable zoning district, or amending dimensional requirements of the existing zoning district. However, for the following reasons, these resolutions are not appropriate for the Neighborhood Overlay District:

- (1) Continually granting variances to similar lots in the same area for the same reasons will result in recurring variance approvals, which is discouraged in Section 14.104.**
- (2) Amending the lot area, lot width, setback, and lot coverage requirements of the underlying zoning district could have the effect of undermining the character of the zoning district as a whole and lead to undesirable development patterns elsewhere in the district.**
- (3) Creating a new zoning district for the Neighborhood Overlay District areas will be very similar to the existing zoning districts with respect to use and development pattern, with the only exceptions being those stated in this section for side yard setbacks and lot coverage.**

(B) Location of Neighborhood Overlay District. The location of the Neighborhood Overlay District shall only apply to those residential neighborhood areas delineated on the Zoning Map that were established before the adoption of this Ordinance and have a historic character worthy of inclusion in the Neighborhood Overlay District. The boundaries of the Neighborhood Overlay District shall not be expanded to apply to isolated lots, or groups of lots, in the township that do not meet the requirements of this section for inclusion into the Neighborhood Overlay District. Prior to considering amending the Zoning Map to include a land into the Neighborhood Overlay District, the Township shall consider if a better remedy is to grant a variance, amend the provisions of the applicable zoning district, or to create a new zoning district, as described in Section 3.117(A) above.

(C) Development Standards. All lots in the Neighborhood Overlay District shall meet the development standards of the underlying zoning district, except as follows:

- (1) Minimum Side Yard Setbacks.** For lots in the Neighborhood Overlay District that do not meet the minimum lot width requirements of the underlying zoning district, the following side yard setback requirements shall apply to the principal building (and accessory buildings attached thereto) only:
 - (a) Principal Buildings (and Attached Accessory Buildings).** Eight (8) feet plus an additional setback of one (1) foot for each one (1) foot that the dwelling exceeds eighteen (18) feet in height, but not to exceed a maximum setback of fifteen (15) feet. Unless not required elsewhere in this Ordinance, the minimum setback

Article 3: Zoning Districts and Map
Section 3.117: Neighborhood Overlay District

distance between the outside walls of 2 or more principal buildings on neighboring lots shall be 10 feet.

(2) Maximum Lot Coverage. For lots in the R-1A and R-1B districts that do not meet the minimum lot area requirements of the underlying zoning district, the following lot coverage requirements shall apply:

(a) R-1A Lots. For lots in the R-1A district that are less than one (1) acre, the lot coverage shall be twenty percent (20%) or 6,534 square feet (i.e., 15% lot coverage of a 1-acre lot), whichever is smaller.

(b) R-1B Lots. For lots in the R-1B district that are less than 25,000 square feet, the maximum lot coverage shall be twenty-five percent (25%) or 3,750 square feet (i.e., 20% lot coverage of a 25,000-square foot lot), whichever is smaller.

Article 7 General Provisions

Section 7.101 Essential Services (currently Section 5.8)

The Planning Commission shall have the power to permit the erection and use of a building or an addition to an existing building, for a public service corporation or for public utility purposes, in any permitted district and permit the location in any use district of a public utility building, structure or use if the Planning Commission shall find such use, height, area, building or structure in compliance with this Ordinance and reasonably necessary for the public convenience and service. The Zoning Board of Appeals may permit a greater height or a larger area than the district requirement herein established, subject to the requirements of Section 14.104. Wireless Communications towers and facilities, wind energy conversion systems, and solar energy systems shall not be considered Essential Services.

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Section 7.102 Performance Guarantees (currently Sections 5.9, 6.9.6.3, and 7.10.12)

(A) Performance Guarantee Authorized. In authorizing any permit, site plan, special use permit, or variance, the Township may require that a performance guarantee be furnished to insure compliance with the requirements, specifications and conditions imposed with the grant of approval and to ensure the discontinuance of a temporary use by a stipulated time.

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(B) Development Agreement for Subdivision, Condominium, PUD, or Other Plan Approval,

(1) If the Township Board approves a condominium, subdivision, PUD plan, or other plan deemed necessary by the Township to have a development agreement, the Township Board shall instruct the township attorney to prepare a development agreement setting forth the conditions upon which such approval is based; such development agreement, after approval by the Township Board, shall be entered into between the township and petitioner prior to the issuance of a land use permit for any construction in accordance with the approved plan. All reasonable costs, as established by the Township Board, related to the preparation of said development agreement shall be paid by the petitioner to the Township Treasurer prior to issuance of any land use permits.

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(2) As a condition of the approval of the plan by the Township, the petitioner shall furnish a cash bond or irrevocable bank letter of credit from a bank chartered in the State of Michigan in the amount of the cost plus an additional 10% of the cost of the proposed improvements to common land, as estimated by the Township, guaranteeing the completion of such improvement within a time to be set by the Township Board.

(C) Guarantee of Completion of Required Improvements. The Township Board shall require all improvements and facilities to be completed before it approves the final plat or accept the project or phase as complete.

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In lieu of the actual installation of required public improvements, or soil erosion measures not covered by Part 91 of Public Act 451 of 1994, as amended, the Township Board shall require the applicant to provide a financial guarantee of performance in one or a combination of the following arrangements for those requirements which are over and beyond the requirements

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Article 7: General Provisions

of the County Road Commission, County Drain Commissioner, and of any other agency responsible for the administration, operation, or maintenance of the applicable public improvement. The Township Board may waive financial guarantees of performance under this Ordinance for road lights, or street trees. Unless these improvements are otherwise specified, completion shall be required prior to the issuance of occupancy permits by the Zoning Ordinance.

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(1) Performance or Surety Bond.

- (a) **Accrual.** The bond shall accrue to the Township, covering construction, operation, and maintenance of the specific improvements.
- (b) **Amount.** The bond shall be in an amount equal to the total estimated cost for completing construction of the specific improvements, including contingencies, as estimated by the Township Board.
- (c) **Term Length.** The term length in which the bond is in force shall be for a period to be specified by the Township Board for the specific improvements.
- (d) **Bonding or Surety Company.** The bond shall be with a surety company authorized to do business in the State of Michigan, acceptable to the Township Board.
- (e) **Escrow Agreement.** The escrow agreement shall be drafted at the expense of the developer and approved by the Township Attorney.

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(2) Cash Deposit, Certified Check, Negotiable Bond, or Irrevocable Bank Letter of Credit.

- (a) **Treasurer, Escrow Agent or Trust Company.** A cash deposit, certified check, negotiable bond, or an irrevocable bank letter of credit, such surety acceptable by the Township Board, shall accrue to the Township. These deposits shall be made with the Township Treasurer, or deposited with a responsible escrow agent, or trust company, subject to the approval of the Township Board
- (b) **Dollar Value.** The dollar value of the cash deposit, certified check, negotiable bond, or an irrevocable bank letter of credit, shall be equal to the total estimated cost of construction of the specific improvements including contingencies, as estimated by the Township Engineer and accepted by the Township Board.
- (c) **Escrow Time.** The escrow time for the cash deposit, certified check, negotiable bond, or irrevocable bank letter of credit, shall be for a period to be specified by the Township Board.
- (d) **Progressive Payment.** In the case of cash deposits or certified checks, an agreement between the Township and the developer may provide for progressive payment out of the cash deposit or reduction of the certified check, negotiable bond, or irrevocable bank letter of credit, to the extent of the cost of the completed portion(s) of the improvement, in accordance with a previously entered into agreement and

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Article 7: General Provisions

acceptance of the completed portion(s) of the improvements by the Township Engineer.

(3) **Condition of Township Approval of Final Road Project, Financial Guarantees.** With respect to financial guarantees, the approval of all final road projects shall be conditioned on the accomplishment of one of the following:

- (a) The construction of improvements required by this Ordinance shall have been completed by the applicant and approved by the Township Board.
- (b) Surety acceptable to the Township Board shall have been filed in the form of a cash deposit, certified check, negotiable bond, irrevocable bank letter of credit or surety bond.

(4) **Inspection of Improvements under Construction.** Before approving a final project, an agreement between the applicant and the Township Board shall be made to provide for the Township Engineer to check and/or inspect the construction of improvements and conformity to plans.

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(5) **Penalty In Case Of Failure to Complete the Construction of an Improvement.** In the event the applicant shall, in any case, fail to complete such work within such period of time as required by the conditions of the guarantee for the completion of improvements, it shall be the responsibility of the Township Board to proceed to have such work completed. In order to accomplish this, the Township Board shall reimburse itself for the cost and expense thereof by appropriating the cash deposit, certified check, irrevocable bank letter of credit, or negotiable bond which the applicant may have deposited in lieu of a surety bond, or may take such steps as may be necessary to require performance by the bonding or surety company, and as included in a written agreement between the Township Board and the applicant.

Section 7.103 Storage of Recreational Vehicles (currently Section 6.2.2(4))

The outdoor storage of recreational vehicles is permitted in agricultural and residential districts provided such storage does not occur within any required yard setback area (except watercraft stored in a waterfront setback), and the vehicle is registered to a person residing on, or having an ownership interest in, the lot or parcel.

Deleted: Storage of Trailer Units.

Section 7.104 Temporary Buildings (currently Section 6.2.3(1))

For uses incidental to construction work; such buildings shall be removed upon the completion or abandonment of the construction work or within the period of one (1) year, whichever is the lesser time period. Such structures shall not be used for dwelling purposes unless they meet the requirements of Section 7.105.

Deleted: Section 7.105Section 7.105

Section 7.105 Use of Structure for Temporary Dwelling (currently Section 7.2.1)

No structure shall be used for dwelling purposes that does not meet the minimum standards as defined in this Ordinance. No partial structure or other temporary structure whether of a fixed or portable

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construction, shall be erected or moved onto a lot and used for any dwelling purposes for any length of time.

Deleted: unless authorized by the Board of Appeals by the issuance of a temporary permit as provided for in Article V, Section 5.7.4

Section 7.106 Outdoor Storage (currently Sections 6.6.3(1) and 7.2.4)

(A) Yard Storage. Unless otherwise provided for in this Ordinance, whenever a business establishment engages in storage of supplies, merchandise, containers or any other materials outside the confines of an enclosed building structure, it shall provide an enclosure of solid fence not less than six (6) feet in height around such yard storage area. The fence shall be constructed and maintained in a manner approved by the Zoning Administrator. The Zoning Administrator may permit substitution of a barrier or screen other than a fence when the same will serve the purpose of screening from vision, noise and odor.

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(B) Prohibited Storage. No land in any of the foregoing Districts shall be used in whole or in part for the storage of unused or discarded equipment or materials, or for the storage of unlicensed cars, boats, salvage, waste and junk outside of properly authorized buildings within said Districts, except as required for the storage of usable farm machinery necessary for permitted agricultural uses and except as permitted as a Junk Yard (Section 6.120) or in connection with a use otherwise authorized by the Commercial District.

Section 7.107 Sanitation Requirements (currently Section 7.1.2)

(A) No structure shall be erected, altered or moved upon a lot or premise and used in whole or in part for a dwelling, business, industrial or recreational purpose unless it meets the following requirements:

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(1) Compliance with all provisions of the Environmental Health Regulations for Grand Traverse County, which may be amended from time to time, and violation of any provision of that Ordinance shall constitute a violation of this Ordinance.

Deleted: shall be had

Deleted: Tri-County Health Ordinance in force in

Deleted: entitled "Sanitary Code of Minimum Standards Regulating Sewage Disposal-Water Supplies and Sanitation of Habitable Buildings in Grand Traverse, Leelanau and Benzie Counties of Michigan" as the same

Section 7.108 Supplementary Height Regulations (currently Sections 7.3.1 and 7.3.2)

(A) Permitted Exceptions. When a given use is permitted in any District, the following kinds of structural appurtenances shall be permitted to exceed the otherwise required height limitations for authorized uses, provided that they shall not be used for human occupancy:

- (1) Ornamental church steeples and cupolas, provided that no ornamental structure that exceeds the maximum height of the district by more than fifty percent (50%) shall be approved unless a special land use permit for such exception is granted under the procedures and requirements of Section 14.103 of this Ordinance.
(2) Functional chimneys, ventilators, television aerials and ham radio antenna, provided they are no higher than necessary to achieve the intended performance of the structure.

(B) Permitted Exceptions, Agricultural Districts. In the agricultural district, traditional agriculture related buildings, such as barns and silos, may be constructed to heights in excess of that

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specified for the district, provided they are first granted a special use permit for such exception under the procedures and requirements of Section 14.103 of this Ordinance.

Deleted: Section 14.103Section 14.103

- (C) **Permitted Height Exceptions, Lower Level Walk-Out.** The maximum height specified in Article 4 may be increased by five (5) feet for residential buildings having a lower level walk-out, provided the walk-out was created because of the natural grade of the land. This provision shall apply only to the side(s) of the building on which the walk-out is located and the side(s) of the building which slope down to the lower level walk-out, provided that the natural grade of the land provides a grade elevation change of at least five (5) vertical feet within the footprint of the proposed residential building.

Section 7.109 Developments Abutting Agricultural Land (currently Section 7.3.3 and Section 7.7)

- (A) **Agricultural Setback.** The following setbacks shall be required when a planned unit development, subdivision, condominium, mobile home park, or attached single-family residential housing is developed; and on those metes and bounds parcels created after the effective date of this amendment, as provided below.

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- (1) A setback of one hundred (100) feet from the property line of the adjacent property shall be required for accessory uses, buildings, or structures as follows:

(a) When a planned unit development, subdivision, condominium, mobile home park, or attached single-family residential housing is developed adjacent to land that is zoned A-1 Agriculture, and;

Deleted: other group housing

(b) When a planned unit development, subdivision, condominium, Mobile Home Park, or attached single-family residential housing is developed adjacent to land that is zoned Residential but is shown on the Agricultural Preserve Map of the Peninsula Township Master Plan as adopted and amended from time to time by the Planning Commission.

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- (2) A setback of one hundred (100) feet from the property line of the adjacent property shall be required for those portions of metes and bounds parcels created after the adoption of this amendment that have a common line with land that is zoned A-1 Agriculture unless that A-1 Agriculture zoned land is being used for residential purposes.

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- (3) The setback areas required by (1) and (2) above shall not be used for accessory uses, buildings or structures.

- (4) A setback of one hundred (100) feet shall be required when a planned unit development, subdivision, condominium, mobile home park, or attached single-family residential housing is developed adjacent to land that is zoned Residential but is currently being used for agricultural production that includes the carrying on of usual soil practices of cultivation, spraying and fertilization.

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(B) Lot Designation. Subdivision Lots or Condominium Limited Common Elements adjacent to such agricultural lands shall have designated building sites shown on the preliminary and final plans. Residential and accessory uses shall be located within the designated areas. Plans accompanying applications for land use permits shall show such designated sites.

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(C) Exceptions to Required Setbacks.

(1) In approving a planned unit development, subdivision, condominium, mobile home park, or attached single-family residential housing development, the Township Board may, upon recommendation of the Planning Commission, decrease the required setback on any or all lots or limited common elements when the Township Board determines that one or more of the following conditions exist:

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(a) The existence of topographic conditions i.e. steep slopes, changes in grade, wetlands etc. or other site conditions which make it:

(i) Unlikely that any of the uses allowed in the agricultural district would be located on the adjacent agriculturally zoned land; or

(ii) So that the properties are sufficiently separated to mitigate incompatibilities of use;

(b) There exists an easement such as a conservation easement on the land adjacent to the proposed plat that restricts agricultural uses in such a manner that protection to future homeowners is equal or better than that provided by the 100 foot setback; or.

(c) There are existing residential uses along the lot line of the agriculturally zoned property.

(D) Fencing Certain Agricultural Lands. When lands used for a planned unit development, mobile home park or attached single-family residential housing development abut agricultural lands as described in Section 7.109, the developer shall, prior to construction of residential units, install a control fence along the boundary between the development and the agricultural lands unless the Township Board determines that trespass problems are not likely and in that case the Board may determine that the fence is not required. The fence is intended to limit trespass onto the agricultural lands. If, at a later date, the Township Board determines that trespass is a problem, the Township Board after holding a public hearing on the issue may then require the owner or owners of the property adjacent to agricultural land to install a fence.

Deleted: other group housing

Deleted: Section 7.109Section 7.109

(1) Suggested minimum fencing specifications.

(a) Mesh. No. 11 gauge woven wire farm fence shall be 46-1/2" in height with 6-1/2" square mesh pattern (uniformly spaced).

(b) Line Posts. Wood line posts shall be 4-1/2" minimum diameter and 7' in length, spaced not more than 16'6" (center to center) and set 2'6" into the ground. All posts shall be wolmanized or treated in an equivalent manner. Wood shall be cedar, oak or approved equal.

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(c) **Corner, End, Gate and Intermediate Braces Posts.** These shall be 8' minimum length and 8" minimum diameter, set 3'6" into the ground, spaced 10' from adjacent line posts, and located as shown on Plans. Intermediate braced posts shall be located a maximum of 660' apart on straight runs. Corner post shall be located at all changes in direction.

(2) Fencing required by this Section shall be built as approved by the Township Board.

(E) **Subdivision Lot Areas.** Individual lot areas in plats abutting certain agricultural lands described in Section 4.7.10 of the Township Subdivision Control Ordinance recorded subsequent to the date of this amendment may be less than the required minimum PROVIDED the average lot size in the recorded plat is not less than the required minimum and PROVIDED FURTHER that any reduced lot size is not less than Seventy (70) percent of the required lot area. Provision for reduced lots shall be stated on the recorded plat so that minimum average lot sizes will be maintained in the event of any subsequent amendments to the plat. No more than twenty (20) percent of the total lots in the plat shall contain less than the required minimum lot area.

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Section 7.110 Lots Existing and of Record on the Effective Date of this Ordinance (currently part of Section 7.3.4)

Any lot existing and of record on the effective date of this original Ordinance may be used for any permitted use specified for the District in which such lot is located whether or not such lot complies with the lot area and width requirements of this Ordinance, PROVIDED that all other requirements of this Ordinance are complied with

Deleted: , and PROVIDED FURTHER that not more than one (1) dwelling unit shall occupy any lot except in conformance with the required lot area for each dwelling unit

Section 7.111 One Dwelling Unit per Lot (currently part of Section 7.3.4)

Unless explicitly permitted elsewhere in this Ordinance, not more than one (1) dwelling unit shall occupy any lot except in conformance with the required lot area for each dwelling unit.

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Any lot existing and of record on the effective date of this original Ordinance may be used for any permitted use specified for the District in which such lot is located whether or not such lot complies with the lot area and width requirements of this Ordinance, PROVIDED that all other requirements of this Ordinance are complied with, and PROVIDED FURTHER that n

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Section 7.112 Clear Vision Area (NEW SECTION)

No structure, wall, fence, sign, tree, or shrubbery shall be erected, maintained or planted on any lot or front yard thereof which unreasonably obstructs or interferes with traffic visibility on a curve or at any intersection of any street, driveway, or other vehicular way. Fences, walls, structures, signs, trees, shrubs, and other plantings located in the clear vision triangle area described below shall not be permitted to obstruct cross-visibility between a height of thirty (30) inches and eight (8) feet above the road level.

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(A) Clear Vision Triangle Area. The clear vision triangle area is described as follows (see Figure 3):

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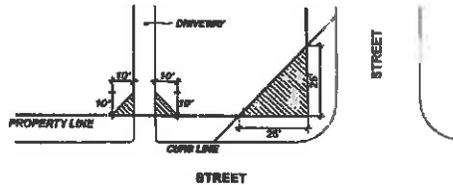
(1) Road Intersection. The area formed at the corner intersection of two (2) road right-of-way lines, the two (2) sides of the triangular area being twenty-five (25) feet in length measured along the abutting right-of-way lines, and the third side being a line connecting these two (2) sides.

Figure 3: Clear Vision Triangle Area

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(2) Driveway Intersection: The area formed at the corner intersection of a right-of-way and a driveway, the two (2) sides of the triangular area being ten (10) feet in length measured along the right-of-way line and edge of the driveway, and the third side being a line connecting these two (2) sides.



(B) Trees. Trees may be permitted in the clear vision triangle area provided that limbs and foliage are trimmed so that they are not less than eight (8) feet above the road level.

(C) Shrubs. Shrubs may be permitted in the clear vision triangle area provided that they are trimmed so that they are not more than thirty (30) inches above the road level.

(D) Landscaping. All landscaping, except turf grass or ground cover, shall not be located closer than three (3) feet from the edge of any driveway or road within a clear vision triangle area.

(E) Right-of-Way Line. Where there is a difference between the existing road right-of-way line and the proposed road right-of-way line, the clear vision triangle shall be measured from the proposed road right-of-way line.

Section 7.113 Accessory Buildings and Structures (currently Section 6.2.2(2)(a))

~~A land use permit must be issued prior to the erection of an accessory building or structure. Applications for accessory buildings and structures shall be administered and reviewed as part of the original or proposed revised plot plan or site plan, depending upon the nature of the principal use of the lot. Accessory uses, buildings and structures shall be subject to the following regulations except as otherwise permitted in this Ordinance.~~

~~Deleted: 1~~

~~**(A) Attached Accessory Buildings and Structures.** An attached accessory building or structure, including carports which are attached to the principal building, shall comply in all respects with the requirements of this Ordinance applicable to the principal building. Unless an accessory building is attached directly to the principal building or connected to it via habitable floor area or shared wall construction, the accessory building shall be classified as a detached structure.~~

~~Deleted: Accessory buildings such as farm buildings and a detached garage for the storage of automobiles shall be permitted with a single-family dwelling; provided, however, that the farm buildings and garage shall comply with the setback restrictions and side yard requirements.~~

~~**(B) Detached Accessory Buildings.** Detached accessory buildings shall comply with the following requirements:~~

~~**(1) Located on Same Lot as Principal Building.** A detached accessory building shall be located on the same lot as the principal or main building, except for agricultural buildings located on a farm. In a case where an owner owns a shoreline lot and an upland lot across the road, the detached accessory building shall be located on the same lot as the principal building. In a case where an owner owns two (2) or more contiguous lots, the owner may combine the lots into one (1) undivided lot so that the detached accessory building is located on the same lot as the principal building.~~

~~Commented [PS43]: On 11/10/99, the ZBA ruled that garages cannot be detached from shoreline parcels~~

~~**(2) Separation Distance of Detached Accessory Buildings.** An accessory building, unless attached and made structurally a part of the principal building, shall not be closer than ten (10) feet to the principal building or any other building on the lot.~~

~~Commented [PS44]: A 10-foot separation distance is common in many Zoning Ordinances and allows for air, light, and emergency access~~

~~**(3) Placement.** Except as provided elsewhere in this Ordinance, detached accessory buildings shall not be located in any front yard and are subject to all yard setback requirements of the district in which it is located. Shoreline lots may have a detached accessory building in the front yard, provided the building meets all other requirements of this Ordinance.~~

~~**(4) Lot Coverage.** Provided that the total lot coverage of the lot adheres to the requirements of the respective zoning district, the maximum allowable lot coverage of all combined detached accessory buildings (excluding agricultural buildings located on a farm) shall be the lesser of the following:~~

~~(a) Eight hundred (800) square feet; or~~

~~(b) The ground floor area of the principal building, excluding the attached accessory buildings (e.g., excluding attached garage area).~~

~~Commented [PS45]: In cases considered on 1/12/95 and 5/13/99, the ZBA cited the County Construction Code which stated that a noncommercial garage was a building that held 4 passenger cars or less. Since 4 passenger cars can fit in a 20' x 10' garage, we recommend 800 sq. ft. as the maximum. However, we recommend limiting the area to the ground floor area of the principal building so that the detached garage is not larger than the house.~~

~~**(5) Height.** Except for agricultural buildings located on a farm, which shall be subject to the height standards of the underlying zoning district, the height of all other detached accessory buildings shall not exceed the following maximum heights:~~

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~~(a) Side Wall Height. 10 feet.~~

Commented [PS46]: On 11/10/99, the ZBA ruled in a case that the maximum wall height would be 10 feet for accessory buildings.

~~(b) Building Height. Eighteen (18) feet.~~

Commented [PS47]: On 11/10/99, the ZBA ruled in a case that the maximum building height would be 10 feet for accessory buildings.

~~(c) Peak Height. Twenty-Six (26) feet.~~

Commented [PS48]: On 11/22/01, a permit was issued by the Township that limited the peak height at 26 feet for accessory buildings.

~~(d) Number of Stories. Two (2) stories; however, if there is a second story, it shall be unfinished and used for storage only.~~

Commented [PS49]: On 11/22/01, a permit was issued by the Township that limited use of the 2nd story of accessory buildings to storage only.

~~(C) Not Permitted Prior to a Principal Structure. Accessory buildings shall not be erected on a lot or parcel in any district prior to the establishment of a principal structure, except for agricultural buildings on a farm.~~

~~(D) Used by Site Occupant. Accessory buildings and accessory portions of the principal building shall be used solely for the use of the occupant of the principal building to which it is accessory.~~

Commented [PS50]: On 1/12/95 and 11/10/99, the ZBA ruled that the use of an accessory building was limited to the occupant of the principal building.

Section 7.114 Fences and Walls (currently Section 7.13)

~~(A) Intent. The intent of this section is to allow fences and walls that: (a) are not erected which would block views; (b) do not obstruct access by emergency personnel; (c) are not within the road right-of-way; (d) are not below the flood elevation line; and (e) are not closer than three (3) feet of adjacent property without the agreement of the neighboring owner.~~

Deleted: with a height of four (4) feet or less within required yards (setbacks) with restrictions so that fences

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~~(B) Excluded Fences. The following fences shall not be regulated by this section:~~

- ~~(1) Agricultural Fences. Agricultural fences that are used for general farming and horticultural uses, field crop and fruit farming, raising and keeping of small animals, and raising and keeping of livestock.~~
- ~~(2) Temporary Fences. Temporary fence such as snow fences placed during the winter to control drifting snow or safety fences during construction.~~
- ~~(3) Low Decorative Fences. A Decorative Fence no greater than eighteen (18) inches in height and/or four (4) inches in width and is not a barrier.~~

~~(C) Retaining Walls. The Zoning Administrator may issue a land use permit for a retaining wall that meets all of the wall requirements of this section, provided the retaining wall is necessary to protect or prevent structures on the premises from erosion damage. The Township Engineer may be consulted to determine whether a retaining wall is necessary and whether it is structurally sufficient.~~

~~(D) Clear Vision Triangle Area. No fence or wall shall be erected, established or maintained within the clear vision triangle area of any lot except in compliance with Section 7.112.~~

~~(E) Front Yard and Waterfront Location. Unless otherwise provided in this Ordinance, no fence shall be constructed between the main building and any road or between the main building~~

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Deleted: within a required yard

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and the waterfront unless that fence is four (4) feet in height or less measured from final grade below the fence, is at least fifty percent (50%) open when viewed from the perpendicular, and is no wider than two (2) feet at any point. If located within a front yard setback or waterfront setback, the fence shall be decorative in nature (e.g., wrought iron, picket, and split rail). Decorative fencing does not include chain link fencing. This sub-section shall not apply to seawalls, which are regulated under Section 3.113(G)(5), or retaining walls, which are regulated under Section 7.114(C).

Deleted: with a width no greater

(F) Maximum Height. Unless otherwise provided in this Ordinance, no fence or wall constructed outside of a front yard or waterfront yard shall exceed six (6) feet in height measured from the final grade below the fence or wall.

(G) Obstructions. No fence or wall shall obstruct access by emergency personnel. A gate at least three (3) feet in width shall be provided for access by emergency personnel to all parts of the property and as such shall not be considered an obstruction.

(H) Required Setbacks.

(1) Shoreline. No fence or wall shall be constructed closer to the shoreline of Grand Traverse Bay than the flood elevation line, unless it is a seawall is approved under Section 3.113(G)(5).

(2) Road Right-of-Way Prohibited. No fence or wall shall be placed within a road right-of-way.

(3) Road, Street, or Alley. No fence or wall shall be placed closer than twenty (20) feet from the driving lane of a road, street or alley.

(4) Adjacent Property. No fence or wall shall be placed closer than three (3) feet to an adjacent property line without both owners providing approval in writing to the Zoning Administrator and such approval shall include a statement that the fence shall be maintained in good condition and such maintenance shall be the responsibility of the owner of property upon which the fence is constructed.

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(I) Construction. Fences shall be designed so as not to impede the natural or established water drainage along lot lines.

(J) Maintenance. Walls and fences shall be maintained in good condition by the owner and shall not constitute an unreasonable hazard. Rotten, crumbled, or broken compounds shall be replaced, repaired, or removed.

(K) Orientation of Finished Side. Where a fence or wall has a single finished or decorative side, it shall be oriented to face outward toward adjacent parcels or road rights-of-way (i.e., away from the interior of the lot to which the fence or wall is associated).

(L) Prohibited Materials. All fences or walls hereafter erected shall be of a decorative nature or chain linked unless otherwise prohibited. Barbed wire, spikes, nails or any other sharp instrument of any kind are prohibited on top of or on the sides of any fence, provided that

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barbed wire cradler may be placed on top of fences enclosing public utility buildings or equipment in any district.

Section 7.115 Swimming Pools (NEW SECTION)

All private swimming pools erected in the Township shall comply with the following provisions:

(A) Permit Required. A building permit shall be obtained for alteration, erection and construction of permanent above and below ground swimming pools and for portable pools with a diameter exceeding twelve (12) feet or an area exceeding one hundred (100) square feet. The application for such permit shall include the name of the owner, the manner of supervision of the pool and a site plan showing the dimensions and location of the pool and nearby buildings, fences, gates, septic tanks, tile fields, public utilities and easements. The application for such permit for a below ground pool shall be accompanied by plans and specifications to scale of the pool walls, slope, bottom, walkway, diving boards, type and rating of auxiliary equipment, piping and valve layout. Any other information affecting construction and safety features deemed necessary by the Township or the County Health Department shall also be submitted.

(B) Easements and Rights-of-Way. No portion of the swimming pool or associated structures shall encroach upon any easement or right-of-way which has been granted for public utility use.

(C) Minimum Setbacks. Minimum side yard setback shall comply with required side yard spaces specified by the applicable zoning district. A pool fence shall not be built within the required front yard or required side yard. Rear or side yard setback shall be not less than ten (10) feet between the pool wall and/or structure and the side or rear property line or less than four (4) feet between pool wall and any building on the lot.

(D) Required Barrier. For the protection of the general public, all swimming pools shall be completely enclosed by a chain link fence or a fence of comparable safety not less than four (4) feet nor more than six (6) feet in height, set at a distance of not less than four (4) feet from the outside perimeter of the pool wall provided; however, that fencing shall not be required in the following two (2) circumstances:

(1) To the extent that there is no public access to the lot or enclosure is accomplished by a building four (4) feet or more in height having no means of public access; or

(2) If a swimming pool is above grade and has exterior side walls with a smooth surface not less than four (4) feet in height where all means of access are secured, raised and/or locked to prevent unauthorized use.

All openings in an enclosing fence or building shall be equipped with a tamper proof lock when the pool is not in use. If the entire premises upon which a swimming pool is located are enclosed by fence or wall, the Building Inspector, after inspection and approval thereof, may determine that a fence is not required.

(E) Electrical Installations. All electrical installations or wiring in connection with below ground swimming pools shall conform to all electrical codes. If utility wires cross under or over the proposed pool area, the applicant shall make satisfactory arrangement with the utility involved

for the relocation thereof before a permit shall be issued for the construction of the swimming pool.

- (F) Code Compliance.** Notwithstanding the requirements of this section, all private swimming pools shall comply with all applicable federal, state, county, and local codes and ordinances. Where the requirements of this Ordinance exceed the requirements of any other code or ordinance, the requirements of this Ordinance shall prevail.

Section 7.116 Accessory Solar Energy (NEW SECTION)

(A) Solar Energy Systems.

(1) Purpose. It is the purpose of this sub-section to promote the safe, effective, and efficient use of solar energy systems to generate electricity. Further, it is the purpose of this sub-section to standardize and streamline the review and permitting process for solar energy systems.

(2) Findings. The Township has found that solar energy is an abundant, renewable, and nonpolluting energy resource of which some residents and utility companies would like to make use. Generation of electricity by these facilities will reduce dependence on non-renewable energy resources and decrease air and water pollution that results from the use of conventional fossil fuels. Solar energy systems will also enhance the reliability and power quality of the power grid, reduce peak power demands, and help diversify the Township's energy supply.

(3) Roof-Mounted Solar Energy Systems: Roof-mounted solar energy systems for the on-site use are permitted accessory structures in all zoning districts, subject to the following regulations:

(a) Height. Roof-mounted systems shall not extend more than three (3) feet above the roofline.

(b) Location. Roof-mounted solar energy systems may be located anywhere on a roof, but shall not protrude beyond the edge of the roof.

(4) Ground-Mounted Solar Energy Systems (10 kW or less). Ground mounted and freestanding solar energy systems of 10kW or less for the on-site use are permitted accessory structures in all zoning districts, subject to the following regulations:

(a) Location and Setbacks. Solar energy systems shall be located to the side or rear of the principal building. Solar energy systems shall also meet the minimum setbacks of the zoning district.

(b) Height. The height of the solar energy system and any mounts shall not exceed ten (10) feet when oriented at maximum tilt.

(c) Screening. Landscaping shall be provided to screen the racking from view on all sides.

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(d) Area. Ground-mounted solar energy systems shall be subject to the maximum lot coverage standards for accessory structures in the zoning district.

(5) General Standards. The following requirements are applicable to all roof-mounted or ground-mounted solar energy systems.

(a) Building Permit. A building permit shall be required for any roof-mounted or ground-mounted solar energy system.

(b) Batteries. When solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure when in use, and when no longer used shall be disposed of in accordance with applicable laws and regulations.

(c) Removal. If a solar energy system ceases to perform its intended function (generating electricity) for more than twelve (12) consecutive months, the operator shall remove the collectors, mounts, and associated equipment and facilities no later than ninety (90) days after the end of the twelve (12) month period. Where the removal has not been lawfully completed as required above, and after at least thirty (30) days written notice, the Township may remove or secure the removal of the solar energy system or portion thereof, with the Township's actual cost and reasonable administrative charges to be placed as a lien on the property. A lien on the property shall be superior to all other liens except taxes.