

# ZONING ORDINANCE

for the

## VILLAGE OF ELLSWORTH

ANTRIM COUNTY, MICHIGAN

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ZONING ORDINANCE  
VILLAGE OF ELLSWORTH  
ANTRIM COUNTY, MICHIGAN

**PREAMBLE**

An Ordinance to provide for the establishment of Zoning Districts to encourage and regulate the use of land and proper location of buildings and structures for residence, trade, industry, or other purposes; to regulate dimensions of yards, and other spaces; to provide for the administration, enforcement, penalties for violation, and amendment of this ordinance.

**ARTICLE I: SHORT TITLE AND PURPOSE**

**Section 1.1 Short Title**

This Ordinance shall be known and may be cited as the Village of Ellsworth Zoning Ordinance

**Section 1.2 Purpose**

The fundamental purpose of this Ordinance is to promote and safeguard the public health, safety, comforts and general welfare of the people; To protect the character and the stability of the residential and business areas within the Village, and to promote their orderly and beneficial development; To protect property values, natural resources and ensure the compatibility of adjacent uses; To provide for a living situation which is complementary and efficient to all the residents of the Village; To prevent nuisances, overcrowding and overuse of land; and to be one means of implementing the Goals and Policies as set forth in the Village of Ellsworth Master Plan.

The purpose and intent of the Sections of this Ordinance pertaining to the regulation of sexually oriented businesses is to regulate the location and operation of, but not to exclude, sexually oriented businesses within the Village, and to minimize their negative secondary effects. It is recognized that sexually oriented businesses, because of their very nature, have serious objectionable operational characteristics which cause negative secondary effects upon nearby residential, educational, religious and other similar public and private uses. The regulation of sexually oriented businesses is necessary to ensure that their negative secondary effects will not contribute to the blighting and downgrading of surrounding areas and will not negatively impact the health, safety and general welfare of village residents. The provisions of this Ordinance are not intended to offend the guarantees of the First Amendment to the United States Constitution or to deny adults access to sexually

oriented businesses and their products, or to deny sexually oriented businesses access to their intended market. Neither is it the intent of this Ordinance to legitimize activities which are prohibited by Village ordinance, state or federal law. If any portion of this Ordinance relating to the regulation of sexually oriented businesses or referenced in those sections is found to be invalid or unconstitutional by a court of competent jurisdiction, the Village intends said portion to be disregarded, reduced and/or revised so as to be recognized to the fullest extent possible by law. The Village further states that it would have passed and adopted what remains of any portion of this Ordinance relating to regulation of sexually oriented businesses following the removal, reduction or revision of any portion so found to be invalid or unconstitutional.

### **Section 1.3 Enabling Authority**

This Ordinance is adopted pursuant to the City and Village Zoning Act, P.A. 207 of 1921 of the State of Michigan, as amended (MCL 125.581 through 125.592).

### **Section 1.4 Enactment**

The provisions of this Ordinance are to become effective and applicable within said Village immediately on and after the date of its passage by Village of Ellsworth Council and subsequent publication as required by law.

### **Section 1.5 Limitation of Zoning Ordinance**

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



## ARTICLE II: INTERPRETATION OF WORDING

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

- A. The particular shall control the general.
- B. The word "shall" is always mandatory and never discretionary. The word "may" is permissive.
- C. Words used in the present tense shall include the future; words in the singular number shall also denote the plural and the plural shall also denote the singular.
- D. A "building" or "structure" includes any part thereof.
- E. The phrase "used for" includes "arranged for", "designed for", "intended for", "maintained for" and "occupied for".
- F. Unless the context clearly indicates otherwise, where a regulation involves two (2) or more items, conditions, provisions, or events, the terms "and", "or", "either...or", such conjunction shall be interpreted as follows:
  - 1. "And" denotes that all the connected items, conditions, provisions, or events apply in combination.
  - 2. "Or" indicates that the connected items, conditions, or provisions, or events may apply singly or in any combination.
- G. "Village" shall refer specifically to the Village of Ellsworth.
- H. Terms not defined shall be assumed to have the meaning customarily assigned them.
- I. Any necessary interpretation of this Ordinance shall be defined by the Village of Ellsworth Zoning Board of Appeals.

### ARTICLE III: DEFINITIONS

**Accessory Building or Structure:** A supplemental building or structure on the same lot as the main building occupied by or devoted exclusively to an accessory use, but not for dwelling, lodging, or sleeping purposes. Where an accessory building is attached to a main building in a substantial manner, such as a wall or roof, the accessory building shall be considered a part of the main building.

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

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

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

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

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing Specified Sexual Activities or Specified Anatomical Areas and still be categorized as an Adult Bookstore or Adult Video Store. The sale of such material shall be deemed to constitute a principal business purpose of an establishment if it comprises 35% or more of sales volume or occupies 35% or more of the floor area or visible inventory within the establishment.

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

- a. persons who appear in a state of nudity;
- b. live performances that are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities;
- c. films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; or
- d. persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

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

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

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

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

**Agriculture:** The use of land or tilling of the soil, raising of trees or field crops or animal husbandry, as a source of significant income.

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

**Alternative Tower Structure:** Man-made trees, clock towers, bell steeples, light poles and other similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

**Antenna:** Any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio signals or other communication signals.

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

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

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

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

**Bed and Breakfast Facility:** See definition for Tourist home.

**Billboard:** A piece of construction upon which a sign or advertisement is displayed for the purpose of informing the general public, but not including bulletin boards used to display official court or public office notices.

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

**Boarding, Lodging, or Rooming House:** A building other than a hotel where for more than twenty (20) days a year lodging, meals, or both are offered to more than three (3), but less than twenty-one (21) persons at a time for compensation.

**Boat and/or Canoe Livery and Boat Yard:** Boat and/or canoe livery and/or boat yard shall mean a place where boats and/or canoes are stored, rented, sold, repaired, decked and serviced.

**Buffer Strip:** A strip of land of definite width and location reserved for the planting of shrubs and/or trees to serve as an obscuring screen or buffer strip in carrying out the requirements of this Ordinance.

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

**Buildable Area:** The buildable area of a lot is the space remaining after the minimum setback and open space requirements of this Ordinance have been complied with.

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

**Building Height:** The building height is the vertical distance measured from the established grade to the highest point of the roof surface if a flat roof; to the deck of a mansard roofs; and to the mean height level between eaves and ridge of gable, hip and gambrel roofs. When the terrain is sloping the ground level is measured at the average wall line.

**Building Width:** The building width is the shorter of the plan view dimensions for the structure.

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

**Child Care Organization:** Any governmental or nongovernmental organization having as its principle function the receipt of minor children for care, maintenance, training, and supervision, notwithstanding whether educational instruction may be given, and organizations commonly described as child caring institutions, child placing agencies, children's camps, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes or day care homes.

**Church:** See definition for Place of Worship.

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

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

**Condominium Unit:** That portion of a condominium subdivision designed and intended for occupancy and use by the unit owner consistent with the provisions of the master deed. A condominium unit is not a lot or parcel as those terms are used in this Ordinance.

**Drive-Thru Restaurant:** Any restaurant with an auto service window.

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

**Dwelling, Single-Family:** A detached building containing not more than one dwelling unit designed for residential use and conforming in all other respects to the standards set forth in Dwelling Unit.

**Dwelling, Two-Family:** A building containing not more than two separate dwelling units designed for residential use and conforming in all other respects to the standards set forth in Dwelling Unit.

**Dwelling, Multiple-Family:** A building containing three or more dwelling units designed for residential use and conforming in all other respects to the standards set forth in Dwelling Unit.

**Enclosed, locked facility:** That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being MCL 333.26423.

**Erected:** Includes built, constructed, reconstructed, extension, enlargement, moved upon, or any physical operation on the premises intended or required for a building or structure. Excavation, fill, drainage, and general land improvements which are not required for a building or structure, shall not be considered to fall within this definition.

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

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

**Essential Services:** The erection, construction, alteration, or maintenance by public utilities or municipal departments, commissions or boards of underground, or overhead gas, electrical, steam, water, or sewer transmission, distribution, collection, supply or disposal systems, including poles, wires, mains, pipes, conduits, cables, hydrants, and similar equipment and appurtenances necessary for such systems to furnish an adequate level of service. Telecommunication towers and facilities, alternative tower structures, and wireless communication antenna are not included with this definition.

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

**Family:** An individual or two or more persons living together as a single housekeeping unit.

**Farm:** All of the contiguous neighboring or associated land operated as a single unit on which bona fide agriculture is carried on directly by the owner-operator, manager, or tenant-farmer by his own labor or with the assistance of members of his household or hired employees.

**Fence:** Any permanent or temporary means, partition, structure or gate erected as a dividing structure, barrier, or enclosure.

**Garage-Private:** A building used primarily for the storage of vehicles for the use of the occupants of a lot on which such building is located.

**Garage-Public:** A building, or part thereof, designed or used for equipping, servicing, repairing, hiring, storing, or parking motor vehicles. The term repairing *does not include* the rebuilding, dismantling or storage of wrecked or junked vehicles.

**Gas and Oil Processing Facilities:** Any facility and/or structure used for, or in connection with, the production, processing or transmitting of natural gas, oil, or allied products or substances, and the injection of same into the ground for storage or disposal, not under the exclusive jurisdiction or control of the Supervisor of Wells, Department of Natural Resources or Public Service Commission; not including industrial facilities such as cracking plants, large oil storage facilities and heavy industrial operations and facilities.

**Gasoline / Service Station:** Any land, building or structure used for sale or retail of motor vehicle fuels, oils, or accessories, or installing or repairing parts and accessories, but not including repairing or replacing of motors, doors, or fenders, or painting motor vehicles.

**Grade:** The ground elevation established for the purpose of regulating the number of stories and the height of buildings. The building grade shall be the level of the ground adjacent to the walls of the building if the finished grade is level. If the ground is not entirely level, the grade shall be determined by averaging the elevation of the ground for each face of the building.

**Greenbelt:** A strip of land parallel to the bank of a stream or lake maintained in trees and shrubs or in its natural state.

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

**Guest House:** Guest house shall mean a building which is on the same lot or building site as the principal dwelling, and is used for the accommodation of guests of the occupants of the principal dwelling.

**Home Occupation:** An occupation, profession, activity, or use that is clearly an incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.

**Hospital:** An institution providing health services, primarily for inpatients and medical or surgical care of the sick or injured, including as an integral part of the institution, such related facilities as

laboratories, out-patient departments, training facilities, central service facilities, clinics and staff offices.

**Hotel:** A building occupied or used as a predominantly temporary abiding place by individuals or groups of individuals, with or without meals, and in which building there are more than five (5) sleeping rooms and in which rooms there is no provision for cooking.

**Housekeeping Cabin Park:** A parcel of land on which two (2) or more buildings are maintained, offered, or used for dwelling or sleeping quarters for transients, but shall not include boarding or lodging houses, tourist homes, hotels or motels.

**Industrial Park:** A special or exclusive type of planned industrial area designed and equipped to accommodate a community of industries, providing them with all necessary facilities and services in attractive surroundings among compatible neighbors.

**Junkyard:** The use of premises or building for storage or abandonment, keeping, collecting, bailing, of inoperable automobiles, trucks, tractors and other such vehicles and parts thereof, scrap building materials, scrap contractor's equipment, tanks, cases, barrels, boxes, piping, bottles, drums, glass, rags, machinery, scrap iron, paper and any other kind of scrap or waste material.

**Kennel:** Any lot or premises on which four (4) or more dogs or cats of age four (4) months or older are kept temporarily or permanently.

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

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

**Lot, Corner:** A lot located at the intersection of two streets or a lot bounded on two sides by a curving street, any two (2) sides of which form an angle of one hundred thirty-five (135) degrees or less.

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

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

**Lot, Double Frontage:** A lot other than a corner lot having frontage on two (2) more or less parallel streets. In case of a row of double frontage lots, one street will be designated as the front street for all lots in the plat in the request for zoning compliance permit. If there are existing structures in the same block fronting on one (1) or both of the streets, the required front yard setback shall be observed on those streets where such structures presently front.

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

**Lot Lines:** The property lines bounding the lot.

- a. **Front Lot Line:** In the case of an interior lot abutting upon one public or private street, the front lot line shall mean the line separating such lot from such street right-of-way. In the case of a corner or double frontage lot, the front lot line shall be that line separating said lot from the street in the plat and in the request for a zoning compliance permit. (*See Lot, Double Frontage* ) In the case of a lot having frontage upon a lake, river, or stream, the water frontage shall be considered the front lot line.
- b. **Rear Lot Line:** The lot line being opposite the front lot line. In the case of a lot irregularly shaped at the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than ten (10) feet long lying farthest from the front lot line and wholly within the lot.
- c. **Side Lot Line:** Any lot line not a front lot line or a rear lot line. A side lot line separating a lot from a street is a side street lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

**Lot of Record:** A parcel of land defined by a legal description and recorded in the office of the Antrim County Register of Deeds on or before the effective date of this Ordinance.

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

**Lot Width:** The horizontal distance between the side lot lines, measured at the two (2) points where the building setback line intersects the side lot line.

**Lot, Zoning:** A contiguous tract of land which at the time of filing for a zoning permit is designated by its owner or developer as a tract to be used, developed, or built upon as a unit, under single ownership.

**Marijuana or marihuana:** That term as defined in Section 7106 of Act No. 368 of the Public Acts of 1978, as amended (Michigan Public Health Code), being MCL 333.7106.

**Master Plan or Comprehensive Plan:** The statement of policy by the Village Planning Commission relative to the agreed-upon desirable physical pattern of future community development. It consists of a series of maps, charts, and written material representing in summary form the community's conception of how it should grow in order to bring about the very best community living conditions.

**Medical Use:** That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being MCL 333.26423.

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

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



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

**Motel:** A series of attached, semi-detached or detached rental units providing overnight lodging for transients, open to the traveling public for compensation.

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

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

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

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

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

**Off Street Parking Lot:** A facility which is not located on a public street or right-of-way providing vehicular parking spaces, along with adequate drives and aisles. Adequate maneuvering space shall also be included to allow unrestricted access and egress to at least two (2) vehicles.

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

**Outdoor Sales Facilities:** Includes use operated for profit, substantially in the open air, including:

- a. Bicycle, utility truck or trailer, motor vehicle, boats, or home equipment sale, repair or rental services.
- b. Outdoor display and sale of garages, motor homes, mobile home, snowmobiles, farm implements, swimming pools and similar activities.
- c. Retail sale of trees, fruit, vegetables, shrubbery, plants, seeds, top-soil, humus, fertilizer, trellises, lawn furniture, playground equipment, and other home garden supplies and equipment.
- d. Tennis courts, archery courts, shuffleboard, horseshoe courts, rifle ranges, miniature golf, golf driving ranges, children's amusement park or similar recreation uses.

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

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

**Person:** An individual, sole proprietorship, partnership, corporation, limited liability company or association.

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

**Planned Unit Development (PUD):** A zoning district which allows a development to be planned and built as a unit and which permits upon review and approval, variations in many of the traditional controls related to density, land use, setbacks, open space and other design elements, and the timing and sequencing of the development.

**Porch, Enclosed:** A covered entrance to a building or structure which is totally enclosed, and projects out from the main wall of said building or structure and has a separate roof or an integral roof with the principal building or structure to which it is attached.

**Porch, Open:** A covered entrance to a building or structure which is unenclosed except for columns supporting the porch roof, and projects out from the main wall of said building or structure and has a separate roof or integral roof with principal building or structure to which it is attached.

**Primary caregiver:** That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being MCL 333.26423 who has registered with the Michigan Department of Licensing and Regulatory Affairs or any successor agency under the Michigan Medical Marijuana Act.

**Primary caregiver facility:** The dwelling in which a primary caregiver resides, or an accessory building to that dwelling, within which the primary caregiver performs primary caregiver services for qualifying patients.

**Principal Use:** The main use to which the premises are devoted and the principal purpose for which the premises exists.

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

**Public Place:** Any real property or an appurtenance to the real property which is owned by this state any municipality of this state, a public agency, or by a college or university in this state and may include a structure, enclosure, facility, or complex, including a court, mall, park, or other area, feature, or element; a public place shall also mean a business or an educational, refreshment, entertainment, recreation, health, or transportation facility, or institutions of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.

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

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

**Qualifying patient:** That term as defined in Section 3 of Initiated Law 1 of 2008, as amended (Michigan Medical Marijuana Act), being MCL 333.26423 who has registered with the Michigan Department of Licensing and Regulatory Affairs or any successor agency under the Michigan Medical Marijuana Act, and includes the parents or legal guardians of a qualifying patient under the age of 18 who are serving as the primary caregiver as required by the Michigan Medical Marijuana Act exclusively for that qualifying patient under the age of 18.

**Recreational Vehicle:** A vehicle designed to be used primarily for recreational purposes, including temporary sleeping quarters and/or cooking facilities, or a unit designed to be attached to a vehicle and used for such purposes, including selfpropelled motor homes, pickup campers, fifth wheel trailers, travel trailers, and tent trailers.

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

**Roadside Stand:** An accessory and temporary farm structure operated for the purpose of selling local agricultural products, part of which are raised or produced on the same farm premises.

**Road Width:** The designed width of a mobile home or trailer coach while in transit on a public highway.

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

**School:** A public or private educational institution offering students a conventional academic curriculum, including kindergartens, elementary schools, middle schools, and high schools. Such term shall also include all adjacent properties owned by and used by such schools for educational, research, and recreational purposes.

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

- a. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- b. activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity.

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

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

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

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

- a. the fondling or other erotic touching of human genitals, pubic regions, buttocks or female breast;
- b. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- c. masturbation, actual or simulated; or
- d. excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

**Shopping Center:** A group of commercial establishments, planned, developed, owned, and managed as a unit, with off-street parking provided on the property, and related in its location, size and type of shops to the trade area which the unit serves.

**Sign:** A structure, including its base, foundation and erection supports upon which is displayed any words, letters, figures, emblems, symbols, designs, or trademarks by which any message or image is afforded public visibility from out of doors on behalf of and for the benefit of any product, place, activity, individual, firm, corporation, institution, profession, association, business or organization.

**Sign, Animated:** Any sign having a conspicuous and intermittent variation in the illumination of the physical position of any part of the sign.

**Sign, Freestanding or Ground:** A sign supported by permanent uprights or braces in the ground.

**Sign, Identification:** An on-premise sign whose copy is limited to the name and address of a building, institution, person and/or the activity or occupation being identified.

**Sign, Off Premise:** Any sign relating to subject matter not conducted on the premises on which the sign is located.

**Sign, On Premise:** An advertising sign relating in its subject matter to the premises on which it is located, or to products, accommodations, service, or activities on the premises.

**Sign, Outdoor business or Informational:** A freestanding, overhanging or wall mounted sign located outside a structure on which is displayed information pertaining to a product, use, occupancy, function, service or activity located within that structure, on the same property as the sign, or at a location different than the property on which the sign is located.

**Sign, Overhanging:** A sign that extends beyond any structure wall and is affixed to the structure so that its sign surface is perpendicular to the structure wall.

**Sign, Portable:** A sign that is designed to be transported, including but not limited to signs:

- With wheels removed;
- With chassis or support constructed without wheels;
- Designed to be transported by trailer or wheels;
- Converted A- or T- frame signs;
- Attached temporarily to the ground, a structure, or another sign;
- Mounted on a vehicle for advertising purposes, parked and visible from the public right-of-way, except signs identifying the business for which the vehicle is being used in normal day-to-day operations of that business.

**Sign surface:** That portion of a sign excluding its base, foundation and erection supports on which information pertaining to a product, use, occupancy, function, service, or activity is displayed.

**Sign, Wall:** Any sign attached parallel to or painted on the exterior surface of a building or structure wall in such a manner that the sign does not extend beyond the surface of the wall to which it is attached.

**Sign, Window:** Any sign, picture, symbol, or combination thereof, designed to communicate information about any activity, business, commodity, event, sale, or service that is placed on a window pane or glass so that it is visible from the out-of doors.

**Special Approval:** Approval by the Village Planning Commission of a use of land in a district that is not antagonistic to other land use in the district when such use is specified in this Ordinance for that district upon such approval.

**Stable, Private:** A stable used or to be used by an individual for housing horses owned by said individual for the use of himself or his immediate family, and located not less than one hundred fifty (150) feet from any adjoining property.

**Stable, Public:** A stable used to house horses for hire, and located not less than one hundred fifty (150) feet from any adjoining property.

**Story:** That portion of a building, other than a basement or mezzanine, included between the surface of any floor and the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.

- a. A "mezzanine" floor shall be deemed a full story only when it covers more than fifty (50%) percent of the area of the story underneath said mezzanine, or if the vertical distance from the floor next below it to the next above it is twenty-four (24) feet or more.
- b. For the purpose of this Ordinance, a basement or cellar shall be counted as a story only if over fifty (50%) percent of its height is above the level from which the height of the building is measured, or if it is used for business purposes.

**Street, Highway, Road:** A thoroughfare which affords the principal means of access to abutting property.

**Structure:** A construction or building, the use of which requires permanent location on the ground or attached to something having permanent location on the ground.

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

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

**Theater, Indoor:** An indoor theater shall be any building used primarily for the presentation of dramatic spectacles, shows, movies, or other entertainment open to the public, with or without charge.

**Theater, Outdoor:** An outdoor theater shall be any other place used for the presentation of dramatic spectacles, shows, movies, or other entertainment open to the public, with or without charge, but not including athletic events.

**Thoroughfares, Secondary:** An arterial street which is intended to serve as a trafficway serving primarily the immediate Village area and serving to connect with major thoroughfares.

**Tourist Home:** Any family occupied dwelling used or designed in such a manner that certain rooms in excess of those used by the family are rented to the transient public for compensation. For the purpose of this Ordinance, the term tourist home also includes bed and breakfast facility.

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

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

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

**Yard, Front:** A yard across the full width of the lot extending from the front line of the principal building to the front lot line, or highway-right-of-way line as the case may be.

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

## **ARTICLE V: ZONING DISTRICTS AND MAP**

### **Section 5.1 Classification of Zoning Districts**

For the purpose of this ordinance, the following Zoning Districts shall be established in the Village of Ellsworth:

- R-1 Low Density Residential District
- R-2 General Residential District
- R-3 Village Residential District
- R-4 Mixed Residential District
- C-1 Village Commercial District
- C-2 General Commercial District
- PUD Planned Unit Development District

### **Section 5.2 Zoning Map**

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

### **Section 5.3 Boundaries of Districts**

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

The official zoning map, including legally adopted amendments, shall be designated as such by the signature of the Village Clerk. Where uncertainty exists as the exact district boundaries, the following shall prevail:

- A. Where boundary lines are indicated as approximately following streets, alleys, or highways; the center lines of the said streets, alleys, or highways shall be considered to be exact boundary lines.
- B. Boundaries indicated as approximately following lot lines shall be considered to follow said lot lines.



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

#### **Section 5.4 Zoning of Vacated Areas**

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

#### **Section 5.5 Zoning of Filled Areas**

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

#### **Section 5.6 Zoning District Changes**

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

INSERT Zoning Map

## **ARTICLE IV: GENERAL PROVISIONS**

### **Section 4.1 The Effect of Zoning**

In order to carry out the intent of this Ordinance, no use of land shall be established or maintained, and no structure or part thereof shall be allowed to be used, constructed, remodeled, altered, or moved upon any property unless it is in conformance with this Ordinance, and a zoning permit has been issued.

If any, use, structure or part thereof is placed upon a piece of property in conflict with the intent and provisions of this Ordinance, such use or structure shall be declared a nuisance and may be required to be vacated, dismantled, abated, or cease operations until brought into conformance with this Ordinance.

In the event that any lawful use or structure which exists or is under construction at the time of the adoption of this Ordinance and is not in conformance with the provisions of the zoning ordinance, such use or structure shall be considered a legal non-conforming use and be allowed to remain as such, including completion of construction, providing completion occurs within one (1) year from the effective date of this Ordinance.

### **Section 4.2 Non-Conformities**

#### **A. Classification of Nonconforming Uses and Structures**

Nonconforming uses and structures are those which do not conform to a provision or requirement of this Ordinance or any subsequent amendment but which were lawfully established prior to the time of Ordinance adoption or amendment. Class "A" nonconforming uses or structures are those which have been so designated by the Planning Commission, after application by the person having interest in the property or the Zoning Administrator, upon finding that the use or any portion of the structure:

1. Is not in an environmentally sensitive area;
2. And the continuance thereof would not be contrary to the purpose of this Ordinance as described in Section 1.2;
3. And the use or structure does not and is not likely to significantly depress the value of nearby properties;
4. And that the use or structure was lawful at the time of its inception and that no useful purpose would be served by strict application of the provisions or requirements of this Ordinance with which the use or structure does not conform.
5. And that the use or structure is of economic benefit to the community.

All nonconforming uses and structures not designated as Class "A" are Class "B" nonconforming uses or structures.

#### **B. Procedure For Obtaining Class "A" Designation, Conditions**

A written application shall be filed setting forth the name and address of the applicant, giving a legal description of the property to which the application pertains and including such other information as may be necessary to enable the Planning Commission to make a determination of the matter. The Planning Commission may require the furnishing of such additional information as it considers necessary. The notice of hearing procedure before the Planning Commission shall be the same as in the case of an application for a variance. The decision shall be in writing and shall set forth the findings and reasons on which it is based. Reasonable conditions may be attached to the Class A designation to prevent conflicts with other property uses or to assure compatibility with the purpose of this Ordinance as outlined in Section 1.2. No vested interest shall arise out of a Class "A" designation.

C. Revocation of Class "A" Designation

Any Class "A" designation shall be revoked, following the same procedure required for designation, upon a finding that as a result of any change of conditions or circumstances the use or structure no longer qualifies for Class "A" designation.

D. Regulations Pertaining to Class "A" Nonconforming Uses And Structures

A Class "A" nonconforming use or structure shall not be repaired, restored, extended, enlarged or substituted for except in accord with the following requirements:

1. The Planning Commission may permit the repair, improvement or modernization of a Class A nonconforming structure to correct deterioration, obsolescence, depreciation and wear, provided the structure will still meet the qualifications of a Class A nonconforming use or structure.
2. A Class "A" nonconforming use or structure damaged by fire, explosion, flood, erosion or other acts of God may be restored, rebuilt or repaired only after approval by the Planning Commission. The Planning Commission shall permit any structure to be returned to its prior use provided there is no increase in the intensity of the nonconforming use and providing there is no increase in the square footage of the nonconforming structure. No restoration, rebuilding or repair shall increase the extent of violation of setback or other dimensional or area requirements of this Ordinance. If a nonconforming structure can be rebuilt in greater conformance or even complete conformance with this Ordinance, then the Planning Commission shall require the greatest possible conformance unless the cost of such compliance exceeds one hundred fifty (150) percent of the replacement cost of the entire structure, then complete compliance or partial compliance shall not be required. The Planning Commission may require the land owner to provide site plans, appraisals or other construction or land data which are necessary to assure compliance with the Ordinance.
3. There shall be no structural changes including enlargement or extension of a Class "A" nonconforming structure or use except after approval of the Planning Commission. In exercising its discretion regarding a request for approval of a structural change, the Planning Commission shall consider the factors contained in Section 7.2, Uses Subject

to Special Approval. In addition, no extension or enlargement of a Class A nonconforming use or structure shall be approved if approval would result in violation or increase of the waterfront, front yard, rear yard, side yard or side yard setbacks, or similar requirements of this Ordinance.

4. A Class "A" nonconforming use may be substituted for by a similar nonconforming use or structure when the Planning Commission determines the substitution would improve the property, would not increase the structure or uses nonconformity, or when the substitution would not be contrary to the intent of this Ordinance.
5. The Planning Commission may attach conditions to any approval granted by the Planning Commission to a Class "A" nonconforming use. Those conditions shall attempt to make the use less nonconforming or to lessen its impact on nearby properties.

#### E. Regulations Pertaining to Class "B" Nonconforming Uses and Structures

It is the intention of this Ordinance that all Class "B" nonconforming uses will either be eliminated or changed to conforming uses over a period of time. This Ordinance is intended to encourage the elimination of Class "B" nonconforming uses and to discourage anything that extends the normal useful life of a Class "B" nonconforming use. A Class "B" nonconforming use or structure shall not be repaired, restored, extended, enlarged or substituted for except in accord with the following requirements:

1. Minor repairs or maintenance of a Class "B" nonconforming use or structure in order to keep it structurally safe and sound is permitted. A Class "B" nonconforming use or structure shall not be repaired, improved or remodeled when such repairs or improvements exceeds fifty (50%) percent of the structures' replacement cost as determined by the Planning Commission. If a Class "B" nonconforming use or structure is changed to conform with this Ordinance, the limitations on repairs or improvements shall not apply.
2. Any Class "B" nonconforming use or structure damaged by fire, explosion, flood, erosion or other acts of God may be restored, rebuilt, repaired only after approval by the Planning Commission. The Planning Commission shall permit any structure to be returned to its prior use provided there is no increase in the intensity of the nonconforming use and providing there is no increase in the square footage of the nonconforming structure. No restoration, rebuilding or repair shall increase the extent of violation of setback or other dimensional or area requirements of this Ordinance. If a non-conforming structure can be rebuilt in greater conformance or even complete conformance with this Ordinance, then the Planning Commission shall require it. The cost of complete compliance or greater compliance with this Ordinance shall not be a factor in the decision of the Planning Commission unless the cost of compliance exceeds one hundred fifty (150) percent of the replacement cost of the structure as determined by the Planning Commission. The Planning Commission may require the land owner to provide site plans, appraisals, or other construction or land data which are necessary to assure

compliance with this Ordinance.

3. No Class "B" nonconforming use or structure shall be enlarged, extended or structurally altered nor shall the nonconforming use be changed to a substantially different nonconforming use.
4. If a mineral extraction operation is designated a nonconforming use, existing holes or shafts may be worked or enlarged on the land which constituted the lot on which operations were conducted at the time of operation being so classified, but no new holds or shafts shall be established.
5. No Class "B" nonconforming use or structure shall be permitted to continue in existence if it was unlawful at the time it was established.
6. A Class "B" nonconforming structure or use may be substituted for with a conforming use or structure, or by a use or structure which meets the requirements of a Class "A" nonconforming use when the Planning Commission determines that the substitution would not increase the nonconformity of the use or structure or be contrary to the public health, safety and welfare and the intent of this Ordinance.

F. Determination of Replacement Cost; Prior Value

The cost of repairing, restoring, or improving a Class "A" or "B" nonconforming use or structure (excluding contents), damaged by fire, explosion, flood, erosion or other acts of God, shall be made on the basis of an appraisal by a qualified individual designated by the Planning Commission. The cost of such determination shall be born by the applicant. The Planning Commission may determine previous value of an existing or pre-catastrophe structure based on information from the most recent Property Tax Assessment record if they find that such record is current and reasonably accurate.

G. Non-conforming Lots of Record:

In any district, principal structures and accessory buildings may be erected on any non-conforming lot of record provided permit for construction of a septic system is granted by the County Health Department and yard requirement variances are obtained through approval of the Zoning Board of Appeals.

If any non-conforming lot or lots are of continuous frontage with other such non-conforming lots under the same ownership, the owner shall be required to combine such lots to provide parcels which shall meet, insofar as possible, minimum requirements for the district in which they are located.

H. Discontinuance of Non-conforming Uses:

If there is an intent to abandon the non-conforming use of any parcel of land and the abandonment continues for a period of six (6) months, then any further use thereof shall conform

to the provisions of this Ordinance.

I. **Creation of Non-Conforming Lots or Parcels**

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

**Section 4.3 Lot Proportion**

The width of any lot, parcel, or land division created after the effective date of this Ordinance shall not be less than twenty-five percent (25%) of the lot or parcel depth.

**Section 4.4 Subdivision of Land**

All preliminary plats submitted to the Village Clerk pursuant to Subdivision Control Act of 1967, PA 288 shall be forwarded to the Planning Commission for review to determine whether said plat is consistent with the minimum lot requirements and other applicable requirements of this Ordinance. The Planning Commission shall forward the preliminary plat to the Village Council with appropriate recommendations based on review findings.

**Section 4.5 Animals**

The keeping of livestock is prohibited on any parcel of land less than five (5) acres in size. Nor may such animals be kept within one-hundred fifty (150) feet of a neighboring residential structure. Livestock shall be prohibited in any area of the Village if the livestock become obnoxious by reason of odor, nuisance or noise. The determination of the Zoning Board of Appeals shall be conclusive on the question of whether obnoxious conditions exist.

**Section 4.6**

**Mobile Homes Used as Temporary Dwellings**

Mobile homes may be used as temporary dwellings until the owner or occupant thereof completes the construction or erection of a conventional housing unit for which a building permit has been issued. Upon application for a temporary dwelling permit from the Zoning Administrator, the applicant may obtain a trailer permit for an initial period not to exceed two (2) years from the effective date of the permit; and upon showing reasonable progress, may renew the permit for not more than one (1) additional year.

**Section 4.7 Principal Uses**

No lot may contain more than one (1) principal structure or use, except that upon determination by the Planning Commission, groups of apartment buildings, offices, retail business buildings, agricultural

structures, or other similar groups of buildings may be considered principal structures or uses.

#### **Section 4.8 Essential Services**

The erection, construction, alteration and maintenance of essential services shall be exempt from the regulations set forth in this Ordinance and shall be permitted in any district. Telecommunication towers, alternative tower structures and antennas shall be regulated and permitted pursuant to this Ordinance and shall not be regulated or permitted as essential services, public or private utilities.

#### **Section 4.9 Greenbelt**

To preserve natural resources, water quality and community scenic and recreational values, a greenbelt shall be established and maintained on all waterfront property. The greenbelt shall include all the land use area located within fifty (50) feet of the ordinary high water mark of a lake or a stream. Within the greenbelt, the following development or use restrictions shall apply:

- A. No structures are allowed except for boat launching and docking facilities.
- B. No dredging or filling is allowed except for reasonable sanding of beaches where permitted by state or federal law.
- C. The use of asphalt, concrete and other impervious surfaces shall be limited to walkways necessary for water access or boat launch ramps.
- D. The use of pesticides, herbicides and fertilizers is strongly discouraged.
- E. Leaves, grass clippings and similar yard and garden wastes may not be burned or stored.
- F. Neither septic tanks nor septic system filtration fields may be located within the greenbelt.
- G. Natural vegetation cover, including trees, shrubs or herbaceous plants shall be maintained on a least sixty percent (60%) of the lake or stream frontage within the greenbelt. Beach sand, gravel, cobblestone or rock may be substituted for vegetated areas where these materials are existing.
- H. The greenbelt shall be shown on any plot plan or site plan submitted for approval during the process of developing a water frontage parcel.

#### **Section 4.10 Home Occupations**

While the Village of Ellsworth recognizes that many residents feel the necessity to work at home, the Village also recognized the rights of all residents to be free from actual or potential nuisance which may be caused by non-residential activities conducted in a residential zone. The intent of this section is to ensure that any home occupation is compatible with other permitted uses in residential districts and to maintain and preserve the residential character of the neighborhood.

- A. The home occupation shall be clearly incidental and subordinate to the principal use of the premises for residential purposes. The exterior appearance of the structure shall not be altered or the occupation within the residence be conducted in a manner which would substantially alter the premises' residential character.
- B. The home occupation is conducted by the person or persons occupying the premises as their principal residence, with assistance from not more than one (1) non-resident employees. Such use shall not occupy more than twenty percent (20%) of the ground floor area of the dwelling unit.
- C. The dwelling has no exterior evidence, other than one (1) non-illuminated sign not exceeding four



- (4) square feet to indicate that the dwelling is being utilized for a non-residential purpose, and such sign is in conformance with the requirements of this Ordinance.
- D. No occupation shall be conducted upon or from the premises which would constitute a nuisance or annoyance to adjoining residents by reason of noise, dust, glare, heat, smoke, fumes, odor, vibrations or electrical disturbance. There shall be no discharge of polluting materials, fluids or gases into the ground or surface water, soil or atmosphere.
  - E. Vehicular and pedestrian traffic generated by the home occupation shall not exceed that which would normally be expected in a residential neighborhood, and the need for parking shall be met off street.
  - F. The home occupation shall not be open to the public earlier than 8:00 a.m. nor later than 8:00 p.m.
  - G. There shall be no open display of goods, materials or services in connection with a home occupation, and no off-street parking shall be permitted within the setback area.
  - H. Any such home occupation shall be subject to inspection by the Zoning Administrator and the permit for same may be terminated for failure to comply with the Zoning Ordinance.

#### **Section 4.11 Mobile Homes**

Mobile homes sated on individual lots shall meet the standards for minimum lot size, yard set-backs, and ground floor space for the district in which they are located and shall meet the following additional standards:

- A. Mobile homes shall be attached to an approved permanent foundation or basement and shall be anchored using a system that meets the Michigan Mobile Home Commission requirements.
- B. Mobile homes shall be installed according to manufacturer's set up requirements, and the construction of the unit shall comply with the National Mobile Home Construction and Safety Standards Act of 1974.
- C. The wheels, axles and towing assembly shall be removed from a mobile home before the unit is attached to the foundation. Additionally, no mobile home shall have any exposed undercarriage or chassis.
- D. Mobile homes shall not be used as an accessory building.

#### **Section 4.12 Fences, Walls and Hedges**

Notwithstanding other provisions in this Ordinance, fences, walls, or hedges may be permitted on any property in the R-1, R-2, R-3, R-4, C-2, PUD Districts, provided that no fence, wall, or hedge exceed a height of six (6) feet and shall be no closer than five (5) feet to the front property line or road right-of-way, and further provided such fence, wall or hedge shall not obstruct sight distances needed for safe vehicular traffic, nor create a hazard to traffic or pedestrians.

Where a lot borders a lake or stream, fencing shall not be constructed on the waterfront side within the required fifty (50) foot greenbelt. Fences shall not exceed four (4) feet in height, nor unreasonably restrict views to the water from neighboring properties.

#### **Section 4.13 Water Supply and Sewage Disposal Facilities**

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

#### **Section 4.14 Stormwater Retention**

Stormwater drainage in excess of natural conditions shall be retained on site. This provision may require stormwater retention ponds where appropriate. An exception may be made for water leaving the site via an adequately sized existing stormwater ditch, stormwater pipe or through other stormwater facilities which will be developed at the same time as the proposed new use.

#### **Section 4.15 Noise Control**

The construction, including excavation, demolition, alteration or repair of any building, and the excavation of streets and highways on Sunday, except between the hours of 9:00 a.m. and 9:00 p.m., and on other days, except between the hours of 12:00 p.m. and 9:00 p.m. is prohibited.

#### **Section 4.16 Salvage or Dumping of Motor Vehicles**

The salvage or dumping of motor vehicles is regulated by the Village of Ellsworth Ordinance Number 12 of 1995, 'Dismantled or Inoperable Motor Vehicles Ordinance'.

#### **Section 4.17 Dumping of Materials**

The natural terrain shall not be altered in any fashion to create safety and health hazards or substantially alter the character of the land so as to make it unsafe for the uses for which it was originally zoned or create olfactory or visual pollution.

- A. Dumping or stockpiling of waste material or junk; the collection, accumulation, storage or disposal of waste material, used construction material, junk or refuse is prohibited, except under the following circumstances.
  - 1. Such practices are a necessary accessory use to a permitted agricultural use.
  - 2. Such practices occur in a junk yard authorized under this ordinance, and are included in the approved site plan.
  - 3. Such practices are a necessary accessory use to a commercial or industrial use authorized under this ordinance, and are included in the approved site plan.
- B. Dumping of soil, sand and clay materials: The extensive dumping of soil, sand, clay or similar materials shall not be allowed on any lot or parcel without the issuance of a special use permit of the Planning Commission and subject to the following requirements:
  - The owner, builder, or contractor obtain a letter from the District Conservationist, Soil Conservation Service, U.S. Department of Agriculture or other qualified soil scientist, setting forth approval and/or recommendations as to the suitability of the site for dumping of such materials; the material to be placed on the site shall be of such a composition as

not to create potential contamination of the natural environment including groundwater, vegetation, soils and surface waters; no dumping of soil, sand, clay or similar material shall be undertaken that appreciably increases the surface runoff reaching adjacent or surrounding property. Surface runoff shall be dissipated by retention on the development parcel, percolation into the soil, evaporation, or by transport by natural drainage way or conduit to an appropriate point of discharge. Extensive dumping of material shall be construed to mean the placing of fill material on a lot or property so as to create a recognizable change in the character of the natural terrain of such lot or property.

- C. Dumping of toxic materials and/or nuclear wastes shall not be allowed in the Village of Ellsworth.

#### **Section 4.18 Hazardous Substances**

All business or industries which store, use or generate hazardous substances as defined in this Ordinance, in quantities greater than 25 gallons or 220 pounds per month whichever is less, shall meet all state and federal requirements for storage, spill prevention, record keeping, emergency response, transport and disposal of said hazardous substances. No discharge to groundwater, including direct and indirect discharges, shall be allowed without required permits and approvals.

#### **Section 4.19 Groundwater Protection**

These provisions apply to uses which use, generate or store hazardous substances in quantities greater than 25 gallons or 220 pounds per month.

- A. Sites at which hazardous substances and polluting material are stored, used or generated shall be designed to prevent spills and discharges to the air, surface of the ground, groundwater, surface water and wetlands.
- B. Secondary containment for aboveground areas where hazardous substances and polluting materials are stored or used shall be provided and maintained. Secondary containment shall be sufficient to store the substance for the maximum anticipated period of time necessary for the recovery of any released substance.
- C. General purpose floor drains shall be allowed only if they are connected to a public sewer system, an on-site holding tank, or a system authorized through a state groundwater discharge permit.
- D. State and federal agency requirements for storage, spill prevention, record keeping, emergency response, transport and disposal of hazardous substances and polluting materials shall be met. No discharges to groundwater, including direct and indirect discharges, shall be allowed without required permits and approvals.

The Planning Commission may require a performance bond or similar assurance for safeguards prior to approval. The Planning Commission may require site plan review at five-year intervals.

#### **Section 4.20 Permitted Uses**

The following uses are specifically permitted in any zone:

Telecommunication towers and alternative tower structures located on property owned, leased, or otherwise controlled by the Village of Ellsworth provided a license or lease authorizing such telecommunication tower or alternative tower structure has been approved by the Village of Ellsworth.

Antenna collocated on telecommunication towers or alternative tower structures which have received

a special use permit which included review of the standards set forth in set forth in Section 17.07(G)(1) of this ordinance

## **Section 4.21 Signs**

A. Purpose: The purpose of this section is to preserve the desirable character of the Village of Ellsworth, as well as to recognize the need for and privilege of advertising, so that people unfamiliar with the area, such as tourists and transients, may avail themselves of the goods and services afforded by the local business places. At the same time, the Village recognizes the right of residents to be free of advertising that could affect property values and create an unpleasant or less than desirable atmosphere. The use and erection of all outdoor signs shall be subject to all federal, state and local statutes and regulations and the regulations of the Village of Ellsworth Zoning Ordinance.

These regulations are intended to permit signs and other displays that are needed for the purposes of identification or advertising, subject to the following objectives: reason of their size, location, spacing, construction or manner of display, signs shall not endanger life or limb, confuse or mislead traffic, obstruct vision necessary for traffic safety, or otherwise endanger the public health or safety. Signs should enhance the aesthetic appeal of the Village. Thus, these regulations are intended to: 1) regulate oversized signs that are out-of-scale with the surrounding buildings and structures, and 2) prevent an excessive accumulation of signs which cause visual clutter and distraction.

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

One (1) non-illuminated identification sign per use, not exceeding two (2) square feet of sign surface.

Street name signs, route markers and other traffic control signs erected or approved by state, county or village agencies when necessary to give proper directions or to otherwise safeguard the public.

Non-advertising signs erected by any organization, person, firm or corporation that is needed to warn the public of dangerous conditions and unusual hazards including but not limited to: road hazards, high voltage, fire danger, explosives, severe visibility, etc.

Non-advertising signs exclusively devoted to controlling property access (no trespassing, private property, keep out, no hunting, hiking trail, day use only, and similar instructional messages), provided the sign surface does not exceed the maximum size limitations of subsection E. below.

Non-advertising signs marking an historically significant place, building or area when sanctioned by a national, state or local historic organization recognized by the planning commission, provided the sign surface does not exceed the maximum size limitations of subsection E. below.

Temporary real estate signs, not exceeding ten (10) square feet, on individual lots advertising a premise for sale or rent.

Signs advertising sales such as garage, estate, auction, moving, and yard sales, which last no more than seven (7) consecutive days, provided the sign surface does not exceed the maximum size limitations of subsection E. below.

Signs that have been approved in conjunction with a valid site plan or zoning permit for any principal or accessory use, and signs required by federal or state agencies in connection with federal or state grant programs.

Political and noncommercial signs, provided the sign surface does not exceed the maximum size limitations of subsection E. below.

- C. Signs Requiring a Sign Permit: Except as otherwise provided in subsection B. above, no sign shall be erected within any zoning district, until a sign permit is issued by the zoning administrator. Sign permit fees shall be established by the Village Council as provided in Section 8.4 of this Ordinance. Before issuing a sign permit, the zoning administrator shall determine that the proposed sign complies with all requirements of this section.

- D. Signs Authorized by Zoning District:

Unless otherwise prohibited in this Ordinance, an outdoor business or informational sign, off-premise sign or temporary sign shall be permitted on property within the Village Commercial District (C-1), the General Commercial District (C-2), the Planned Unit Development District (PUD) and on property in any zoning district on which a home occupation is located, if and only if all of the requirements of this section are met.

Unless otherwise prohibited in this Ordinance, an outdoor business or informational sign, temporary sign or one (1) identification sign at each entrance to residential subdivisions or developments shall be permitted on property within the Low Density Residential District (R-1), General Residential District (R-2), Village Residential District (R-3), and Mixed Residential District (R-4).

- E. Size Regulations:

The sign surfaces of all outdoor business or informational signs, off-premise signs, portable, and signs expressing noncommercial views shall not exceed the following size limitations:

Zoning District	Maximum Size of Sign Surface
R-1, R-2, R-3 and R-4	Ten (10) square feet
C-1 and PUD	Twenty-four (24) square feet
C-2	Thirty two (32) square feet

All identification signs located at the entrance to residential subdivisions and developments shall be no more than sixteen (16) square feet per sign.

- F. Location Regulations: The following regulations apply to all signs regardless of the zoning district in which they are located.

No off-premise sign shall be permitted in R-1, R-2, R-3 or R-4 zoning districts. No freestanding sign shall exceed a maximum height of twenty (20) feet, as measured from the ground to the top of the sign.

Both sides of any freestanding or overhanging sign may be used as a sign surface.

Before erecting an overhanging sign above a public right-of-way, the owner of the sign shall receive the written approval of the proper governmental agency having jurisdiction over that right-of-way. An overhanging sign shall not project beyond the structure wall to which it is attached more than five (5) feet and shall be no less than fourteen (14) feet above the public right-of-way.

Freestanding signs may be permitted in a front yard, provided the sign is located no less than ten (10) feet from the front lot line.

In no case shall a wall sign or window sign exceed a total of ten (10%) percent of the area of the building wall to which it is attached.

No sign shall be placed at any location which obstructs the vision of drivers using a public or private street or alley or which obstructs the vision of drivers using any driveway, parking lot or other route providing ingress or egress to any premise.

A commercial use located in any zoning district shall not have more than two (2) off-premise signs related to that commercial use and such signs shall be permitted in the C-1 and C-2 zoning districts. Not more than one (1) off-premise sign shall be allowed in the C-1 and C-2 zoning districts per three hundred (300) feet of road frontage or one (1) off-premise or on-premise sign per lot, whichever allows more signs.

No sign shall be located on the roof of any building or structure.

- G. Sign Lighting: The following regulations apply to all signs regardless of the zoning district in which they are located.

Signs may be illuminated, provided the lighting is directed, shaded or designed so as not to interfere with vision of persons on adjacent highways, streets or properties and is not directed skyward so as to unnecessarily illuminate the night sky.

Except for time and temperature signs, signs containing flashing, intermittent or moving lights are prohibited.

For internally lighted signs, the sign background or field shall be opaque.

Letters, numerals, logos and similar message elements may be of a transparent material to permit the internal lighting to reveal the message or information on the sign surface.

H. Temporary Signs: The following regulations apply to all temporary signs regardless of the zoning district in which they are located.

Portable signs shall be allowed for a maximum of thirty (30) days within any calendar year.

In the case of a special event, which occurs no more than once every six (6) months and lasts for a period not to exceed twenty-one (21) consecutive days, advertising devices such as banners, balloons, flags, pennants, pinwheels, searchlights or other devices with similar characteristics are permitted for a period not more than seven (7) days prior to the special event and not more than one day (1) after the completion of the special event.

In the case of a special event lasting no more than seven (7) consecutive days that occurs periodically throughout the year, at the same times, and for the same duration, advertising devices such as banners, balloons, flags, pennants, pinwheels, searchlights or other devices with similar characteristics are permitted pursuant to an annual zoning permit for a period not more than seventy-two (72) hours prior to the special event and not more than twelve (12) hours after the completion of the special event.

Signs advertising sales such as garage, estate, auction, moving, and yard sales, which last no more than seven (7) consecutive days, shall be permitted no more than forty-eight (48) hours prior to the sale, provided the signs are removed immediately after the sale.

Signs expressing noncommercial views shall be permitted.

Political signs shall be removed within five (5) days after the election to which they apply.

I. Sign Maintenance: A property owner may maintain or improve an existing conforming sign without a sign permit, provided the type, size, shape, height and use remains the same.

J. Nonconforming Signs: Any sign lawfully in existence prior to the enactment of this section which does not meet the requirements of this section may continue in use as a nonconforming sign. The maintenance, reconstruction, alteration, discontinuation or change in a nonconforming sign shall be governed by Section 4.2 of this Ordinance.

K. Variances: The Zoning Board of Appeals shall have the power to authorize, upon an appeal, specific variances from the requirements of this section. The request for a variance from the requirements of this section shall be governed by the rules and procedures relating to variances contained in Article IX of this Ordinance.

## ARTICLE VI: DISTRICT REGULATIONS

### Section 6.1 Low Density Residential (R-1)

The following provisions shall apply to the Low Density Residential District (R-1).

#### Section 6.1.1 Intent

The land uses in this District are intended to encourage an environment of predominantly low density residential structures located on individual lots along with other residential related facilities which serve the residents within the District.

#### Section 6.1.2 Permitted Uses

Except as otherwise provided by **Section 1.5 Limitations of Zoning Ordinance**, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

- A. Single-family dwellings.
- B. Two-family dwellings.
- C. Public parks, playgrounds or recreation facilities.
- D. Child or adult daycare facilities serving six (6) or fewer clients.
- E. Farming and agricultural operations
- F. Accessory buildings and uses customarily incidental to the above permitted uses.

#### Section 6.1.3 Uses Subject to Special Approval

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Section 7.2 Uses Subject to Special Approval**.

- A. Bed and breakfast facilities.
- B. Convalescent or nursing homes.
- C. Senior citizen housing facilities.
- D. Public buildings and facilities.
- E. Churches and related religious buildings.
- F. Cemeteries, on a minimum of twenty (20) acres.
- G. Golf courses or country clubs.
- H. Home occupations, subject to the provisions of **Section 4.10 Home Occupations**.
- I. Tourist related businesses along Ellsworth-East Jordan Road, (C-48), such as motels, restaurants and retail shops.
- J. Public and private campgrounds.

Accessory buildings and uses customarily incidental to the above special approval



uses.

Telecommunication towers and facilities and alternative tower structures.

## **Section 6.2 General Residential District (R-2)**

The following provisions shall apply to the General Residential District (R-2).

### **Section 6.2.1 Intent**

The purpose of the provisions of this District is to reserve areas principally for single-family residential use, and maintain safe and desirable conditions for this and similar uses, and to promote the proper use, enjoyment and conservation of the water, land topographic and vegetation resources of the area of the Village deemed particularly adapted to such uses.

### **Section 6.2.2 Permitted Uses**

Except as otherwise provided by **Section 1.5 Limitations of Zoning Ordinance**, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

- A. Single-family dwellings.
- B. Two-family dwellings.
- C. Public parks, playgrounds or recreation facilities.
- D. Child or adult daycare facilities serving six (6) or fewer clients.
- E. Accessory buildings and uses customarily incidental to the above permitted uses.

### **Section 6.2.3 Uses Subject to Special Approval**

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Section 7.2 Uses Subject to Special Approval**.

- A. Bed and breakfast facilities.
- B. Convalescent or nursing homes.
- C. Public buildings and facilities.
- D. Churches and related religious buildings.
- E. Cemeteries, on a minimum of twenty (20) acres.
- F. Golf courses or country clubs.
- G. Home occupations, subject to the provisions of **Section 4.10 Home Occupations**.
- H. Accessory buildings and uses customarily incidental to the above special approval uses.

### **Section 6.3 Village Residential District (R-3)**

The following provisions shall apply to the Village Residential District (R-3).

#### **Section 6.3.1 Intent**

The purpose in creating the Village Residential District (R-3) is to provide a limited mixture of residential housing types to provide a wider range of choice by residents seeking housing. Structures shall be located on lots or premises, served by the municipal water system, adequate in size and soil type to allow for an on-site septic system, and set back from the public thoroughfare to facilitate safe exit from and entrance to the premises.

The requirements are intended to protect and stabilize the basic qualities of the District, and to provide suitable and safe conditions for family living. The District is established in conformity with the existing areas. Since certain other uses are generally accepted as compatible with residential development, if properly integrated, the inclusion of such uses is provided by "Special Approval".

#### **Section 6.3.2 Permitted Uses**

Except as otherwise provided by **Section 1.5 Limitations of Zoning Ordinance**, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

- A. Single-family dwellings.
- B. Two-family dwellings.
- C. Public parks, playgrounds or recreation facilities.
- D. Child or adult daycare facilities serving six (6) or fewer clients.
- E. Accessory buildings and uses customarily incidental to the above permitted uses.

#### **Section 6.3.3 Uses Subject to Special Approval**

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Section 7.2 Uses Subject to Special Approval**.

- A. Multiple-family dwellings.
- B. Bed and breakfast facilities.
- C. Public buildings and facilities.
- D. Churches and related religious buildings.
- E. Civic, social and fraternal organization facilities.
- F. Child or adult daycare facilities serving more than six (6) clients
- G. Home occupations, subject to the provisions of **Section 4.10 Home Occupations**.

- H. Group foster care facilities.
- I. Convalescent or nursing homes.
- J. Accessory buildings and uses customarily incidental to the above special approval uses.

#### **Section 6.4 Mixed Residential (R-4)**

The following provisions shall apply to the Mixed Residential District (R-4).

##### **Section 6.4.1 Intent**

The Mixed Residential (R-4) District is designed to provide a location within the Village for dwelling units containing a mixture of densities and housing types . Those structures which offer an alternative to single family detached housing (while still adhering to a low and medium density character of the community) will be permitted in this District. This District shall be located within the Village to facilitate access to commercial activities and community services.

##### **Section 6.4.2 Permitted Uses**

Except as otherwise provided by **Section 1.5 Limitations of Zoning Ordinance**, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

- A. Single-family dwellings.
- B. Two-family dwellings.
- C. Multiple-family dwellings.
- D. Child or adult daycare facilities.
- E. Group foster care facilities.
- F. Bed and breakfast facilities.
- G. Public buildings and facilities.
- H. Churches and related religious buildings.
- I. Professional offices.
- J. Public parks, playgrounds or recreation facilities.
- K. Accessory buildings and uses customarily incidental to the above permitted uses.

##### **Section 6.4.3 Uses Subject to Special Approval**

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Section 7.2 Uses Subject to Special Approval**.

- A. Convalescent or nursing homes.
- B. Mobile home park or manufacture home development, minimum twenty (20)

- acres.
- C. Home occupations, subject to the provisions of **Section 4.10 Home Occupations**.
  - D. Sand and gravel excavation subject to the provisions of **Section 7.3 Supplemental Site Development Standards**.
  - E. Mini-Storage.
  - F. Accessory buildings and uses customarily incidental to above special approval uses.

### **Section 6.5 Village Commercial District (C-1)**

The following provisions shall apply to the Village Commercial District (C-1).

#### **Section 6.5.1 Intent**

The intent for establishing this District is to provide for the continuation of and enhancement of existing commercial in the downtown Village area. This District typically accommodates those retail and business activities which cater to the needs of permanent residents and tourists of the area.

#### **Section 6.5.2 Permitted Uses**

Except as otherwise provided by **Section 1.5 Limitations of Zoning Ordinance**, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

- A. Restaurants and bars, except drive-through restaurants.
- B. Tourist related retail businesses.
- C. Retail sales, within an enclosed building.
- D. Banks and financial services.
- E. Business and personal services.
- F. Professional offices.
- G. Funeral homes.
- H. Public utility buildings without storage yards.
- I. Public buildings and facilities.
- J. Civic, social and fraternal organization facilities.
- K. Public parks, playgrounds and recreation facilities.
- L. Churches and related religious buildings.
- M. Motels and resorts.
- N. Accessory buildings and uses customarily incidental to the above permitted uses.

#### **Section 6.5.3 Uses Subject to Special Approval**

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Section 7.2 Uses Subject to**

*Special Approval.*

- A. Multiple-family dwellings.
- B. Residential dwellings on the second floor of commercial structures.
- C. Gasoline / Service Station
- D. Sale of motor vehicles.
- E. Outdoor sales facilities.
- F. Any use permitted in C-1 with a drive-thru window, exclusive of drive-thru restaurants.
- G. Accessory buildings and uses customarily incidental to the above special approval uses.

**Section 6.6 General Commercial District (C-2)**

The following provisions shall apply to the General Commercial District (C-2).

**Section 6.6.1 Intent**

The intent for establishing this District is to provide for commercial uses along designated portions of Atwood Road, (C-48). This District typically accommodates those business activities which require more space and cater to the needs of permanent residents and tourists of the area.

**Section 6.6.2 Permitted Uses**

Except as otherwise provided by **Section 1.5 Limitations of Zoning Ordinance**, the use of all lands and premises, and the erection and use of all buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses.

- A. All permitted uses in C-1
- B. Child or adult daycare facilities.
- C. Medical clinics.
- D. Veterinary hospital or kennel, on a minimum of five (5) acres, subject to the provisions of **Section 7.3 Supplemental Site Development Standards**.
- E. Outdoor commercial recreation facilities.
- F. Retail and wholesale sales.
- G. Enclosed warehouses.
- H. Farming and agricultural operations.
- I. Plant nurseries.
- J. Accessory buildings and uses customarily incidental to the above permitted uses.

**Section 6.6.3 Uses Subject to Special Approval**

Special approval use of lands and premises, and the erection and use of buildings and structures shall, after the effective date of this Ordinance, be limited to the following uses and shall be subject to the provisions of **Section 7.2 Uses Subject to**

*Special Approval.*

- A. All special approval uses in C-1
- B. Car wash facilities.
- C. Auto body and paint shops.
- D. Lumber yards.
- E. Mining and incidental gravel processing.
- F. Manufacturing uses.
- G. Sale and storage of fuels.
- H. Drive-through restaurants.
- I. Gas and oil processing facilities, subject to the provisions of **Section 7.3 Supplemental Site Development Standards.**
- J. Outdoor storage facilities.
- K. Adult entertainment establishments, subject to the provisions of **Section 7.3 Supplemental Site Development Standards.**
- L. Accessory buildings and uses customarily incidental to the above special approval uses.

**Section 6.7 Planned Unit Development District (PUD)**

**Section 6.7.1 Intent**

The intent of the Planned Unit Development is to allow design and use flexibility on a given site while at the same time protecting present and future residents and public facilities from the adverse effects of unplanned or unregulated development. This approach allows the applicant to utilize innovative designs and methods to control the effects of development rather than having rigid numerical zoning standards dictate design parameters. The burden of proving a Planned Unit Development is within the parameters and intent of this Ordinance is completely upon the applicant. The Village Planning Commission is to be the judge of whether or not the design contains sufficient safeguards as to make the effects of the development compatible with the intent of this Ordinance. It is the expressed intent of this section to allow such items as setbacks, yards, parking spaces, type of dwelling unit and use to be regulated on an overall impact or gross development basis rather than individually for each lot, use, or structure.

**Section 6.7.2 Criteria**

A Planned Unit Development shall be judged against the criteria outlined below. The discretionary judgmental process shall follow, first the procedures specified in this Article and second other conditions specified in this Ordinance, such as under the General Provisions and Supplemental Site Development Standards.

A. Size

A Planned Unit Development shall be of sufficient size to contain on the site

both physically and aesthetically not only the development proposed but also any effects of such development that would ordinarily be apparent and different from the effects of permitted uses on the adjacent properties.

B. Internal Design Standards

A Planned Unit Development shall be designed so as to provide future users, residents, visitors, and public service personnel with light, air, privacy, circulation patterns, park areas, and public services equal to or greater than those required of the same uses in any zoning district where they are permitted.

C. External Effects

A Planned Unit Development shall be designed so as not to create any significant negative impact upon adjacent properties, residents, or public facilities.

### **Section 6.7.3 Approval Procedures**

A. Pre-Application Meeting

The procedure of application and approval of a PUD permit shall include one (1) or more informal conferences between the applicant and Zoning Administrator. The applicant shall inform the Zoning Administrator of the applicant's general intentions at this time. The Zoning Administrator may request or recommend the applicant request representatives from Village, Township or County agencies (department of public works, fire department, county sheriff and other agencies) to attend such informal conferences. After consideration of comments from the pre-application meetings, the applicant shall prepare a preliminary plan.

B. Requirements of Preliminary Plan

Following the Pre-application Conference, the applicant may file a PUD application with the Zoning Administrator in order to receive a formal Planning Commission review of a Preliminary Planned Unit Development Plan for the subject property. The applicant shall submit twelve (12) copies of Preliminary Planned Unit Development Plan with the PUD application, at least twenty-one (21) days prior to the date of the Planning Commission meeting at which a Public Hearing on the Plan is to be scheduled.

The Preliminary Planned Unit Development Plan shall provide all the information specified under **Section 7.1 (B) Site Plan Review-Site Plan Data Required**.

C. Planned Unit Development Review Procedure

1. Public Hearing: Upon request Village Planning Commission shall

schedule, notice and conduct a public hearing on the Planned Unit Development Preliminary Plan.

2. Approval / Action: Following the public hearing, the Village Planning Commission shall approve, disapprove or approve subject to specified conditions / revisions to the proposed Planned Unit Development. If the required conditions or revisions are, in the opinion of the Planning Commission, substantive in nature, a second public hearing shall be held. Approvals shall be valid for twelve (12) months. If a final plan is not submitted within twelve (12) months the preliminary approval shall become null and void.
3. Final Approval: A final plan shall be prepared incorporating any changes specified as part of the preliminary approval. The Zoning Administrator shall review the final plan for compliance with the provisions of the preliminary approval. If found to be in compliance, the Zoning Administrator shall issue a final approval and shall notify appropriate agencies that construction permits may be issued. Final approval shall be valid for twelve (12) months. If construction permits are not obtained within this time, the approval shall become null and void.
4. Performance Bonds: To ensure compliance with the approved final plan, the Village may require a deposit, (cash, certified check, irrevocable bank letter of credit, or security bond), to cover the estimated cost of improvements. The performance guarantee shall be deposited, with the Village Clerk, at the time of the issuance of the permit authorizing the activities or project. The Village may not require the deposit of performance guarantee before the Village is prepared to issue the permit. The Village shall rebate or release any cash deposits in reasonable proportion to the ratio of work completed on the required improvements as work progresses.

#### **Section 6.7.4 Fees**

Fees for PUD Project Master Plan review shall be established or revised by resolution of the Village Council.



**Section 6.8 Schedule of Regulations (insert)**

Footnotes to Schedule of Regulations:

- a. For lots which border a lake or a stream, the minimum structure setback on the waterfront side shall be fifty (50) feet from the ordinary high water mark.
- b. In cases where a curvilinear street pattern produces irregularly shaped lots with nonparallel side lines, a lesser frontage width at the street line may be permitted, PROVIDED that the lot width at the building line is equal to (or greater than the) specified lot width for that District.
- c. The following Minimum Lot Area shall be required in the R-4 District:

One Family	9,600 square feet for each dwelling unit.
Two Family	7,000 square feet for each dwelling unit.
Multiple Family	8,000 square feet for first dwelling unit, plus 5,000 square feet additional for each additional 3 or more bedroom units and 4,000 square feet additional for each additional two-bedroom unit and 3,000 square feet for each additional one bedroom or efficiency unit. Lot sizes subject to <b>Section 4.13 Water Supply and Sewage Disposal Facilities.</b>
Tourist or Lodging Houses	10,000 square feet, plus an additional 500 square feet for each non-resident person accommodated.
- d. No side yards are required in the Village Commercial District (C-1), EXCEPT, when adjacent to any Residential District (R-1, R-2, R-3 or R-4), in such cases the adjacent Residential District regulations will apply.
- e. No Rear yards are required in the Village Commercial District (C-1), EXCEPT when a rear lot abuts any Residential District (R-1, R-2, R-3 or R-4) without an intervening alley, there shall be a rear yard of at least twenty (20) feet.
- f. Height restrictions in this Article do not apply to telecommunication towers and facilities and alternative tower structures located in accordance with this Ordinance.

## **ARTICLE VII: SITE PLAN REVIEW, SPECIAL APPROVAL USES, SITE DEVELOPMENT STANDARDS, PARKING REQUIREMENTS**

### **Section 7.1 Site Plan Review (All Districts)**

Site plans give the Planning commission an opportunity to review development proposals in a concise and consistent manner. The use of the site plan ensures that the physical changes in the property meet with local approval and that development actually occurs as it was promised by the developer.

- A. Circumstances Requiring a Site Plan: Site plans are required for the following uses:
1. All new uses except one-family or two-family residential units.
  2. Expansion or renovation of an existing use, other than one-family or two-family residential use, which increases the existing floor space more than twenty five (25) percent.
  3. Changes of use for an existing structure or lot.
  4. Other uses as required by this Ordinance.
- B. Site Plan Data Required: Each site plan submitted shall contain the following information unless specifically waived, in whole or in part by the Village Planning Commission.
1. The date, north arrow, scale and name of the individual or firm responsible for preparing said plan. The scale must be at least one (1) inch = fifty (50) feet for parcels under three (3) acres and not less than one (1) inch = one hundred (100) feet for parcels three (3) acres or more.
  2. The boundary lines of the property, to include all dimensions and legal description.
  3. The location of all existing and proposed structures on the site, including proposed drives, walkways, signs, exterior lighting, parking (showing the dimensions of a typical parking area), loading and unloading areas, common use areas and recreational areas and facilities.
  4. The location and width of all abutting right-of-ways.
  5. The location of existing environmental features, such as streams, wetlands, shorelands, mature specimen trees, wooded areas or any other unusual environmental features.
  6. The location and identification of all existing structures within a two hundred (200) foot radius of the site.
  7. The name and address of the property owner.
  8. The existing zoning district in which the site is located and the zoning of adjacent parcels. In the case of a request for a zoning change, the classification of the proposed new district must be shown.
  9. The location of all existing and proposed landscaping as well as all existing and proposed fences or walls.
  10. A location sketch of the proposed use or structure.
  11. The type, location and size of all existing and proposed utilities.
  12. The location, size and slope of all surface and subsurface drainage facilities.
  13. Summary tables, cross-sections and/or floor plans should be included with site plans for proposed structures, giving the following information:

- a. The number of units proposed, by type, including a typical floor plan for each unit.
  - b. The area of the proposed units in square feet, as well as area dimensions of driveways and staging areas.
  - c. Typical elevation drawings of the front and rear of each building.
14. The topography of the existing and finished site shall be shown by contours or spot elevations. Where the existing slope on any part of the site is ten percent (10%) or greater, contours shall be shown at height intervals of two (2) feet or less.
  15. Anticipated hours of operation for proposed use. The Planning Commission may impose reasonable limits to hours of operation as a condition of site plan approval when warranted to assure compatibility with surrounding land uses.
  16. The Planning Commission can waive any or all of the above site plan requirements.

C. Submittal and Approval Procedures: Twelve copies of the proposed site plan, including all required additional or related information, shall be presented to the Zoning Administrator's office by the petitioner or property owner or his designated agent at least ten days prior to the Planning Commission meeting where the site plan will be considered. The Zoning Administrator shall cause the submittal to be placed on the agenda of the next regular Planning Commission meeting.

The Planning Commission shall have the responsibility and authorization to approve, disapprove or approve with modifications, the Site Plan in accordance with requirements of the zoning district in which the proposed use is located and shall further consider the following criteria:

1. The sewage disposal and water systems meet the applicable health and sanitary codes and ordinances.
2. The location and nature of the use will not be in conflict with any principal permitted use of the district or neighborhood.
3. The use will not create any major traffic problem or hazard.
4. The use will not be any more objectionable to adjacent and nearby properties than would be any permitted principal use of the district by reason of traffic, noise, vibration, dust, fumes, smoke, odor, fire hazard, glare, flashing lights, or disposal of waste and sewage.
5. The use will not discourage or hinder the appropriate development and use of adjacent premises and the neighborhood.

Any conditions or modifications desired by the Planning Commission shall be recorded in the minutes of the appropriate Planning Commission meeting.

D. Site Plan Amendments:

1. Designation of Site Plan Amendments

A site plan amendment shall be designated as major if the change to a previously approved permit application site plan or supporting documents, relate to a factor which would justify the denial of a proposed site

plan application, based on the standards and requirements of this minor change to a site plan would be any other type of

Ordinance. A change.

2. Major Site Plan Amendment Procedure

A major Site Plan Amendment shall follow the provisions of Section 7.1 (C) "Submittal and Approval Procedures" and a legally noticed public hearing shall be held on the Site Plan Amendment.

3. Minor Site Plan Amendment Procedure

An approved Site Plan may be submitted for minor amendment to the Zoning Administrator for review and signature by the Planning Commission Chair.

E. Administrative Fees: Any Site Plan application shall be accompanied by a fee, in an amount to be determined by the Village Council. Such fee shall be for the purpose of payment for the administrative costs and services expended by the Village in the implementation of this Section and the processing of the application. Such fee may be used to reimburse another party retained by the Village to provide expert consultation and advise regarding the application. The Village may return any unused portion of the fee to the applicant. Any costs of special meetings called to review site plans shall be paid by the applicant.

F. Revocation: When the construction of a building or creation of a use is found to be in nonconformance with the approved Site Plan, the Planning Commission may fully and finally revoke, by official action its original approval, by giving the owner evidence in writing of such action, which becomes effective ten (10) days following the original notice of such impending action being properly communicated to the owner. The owner may remedy the violation during this ten (10) day period, at which time he shall so notify the Planning Commission, who may then, by official action, defer revocation.

Uses requiring special approval shall be subject to the general provisions of the zoning district where located in addition to applicable provisions of this section to prevent conflict with or impairment of the other uses or uses permitted by right of the district. Each use shall be considered an individual case.

### **Section 7.2.2 Special Approval**

- A. Application shall be submitted through the office of the Zoning Administrator, to the Planning Commission, on a special form provided for that purpose, and shall include the following:
  - 1. Site plan prepared under the requirements of **Section 7.1 (B) Site Plan Review (All Districts) - Site Plan Data Required**. Name and address of applicant and owner of the premises.
  - 2. Description of proposed use, including parking facilities, if required, and any exceptional traffic situation the use may occasion.
  - 3. A statement by applicant appraising the effect on the neighborhood.
  - 4. The application shall be accompanied by the fee established by the Village Council.
- B. A public hearing shall be held for all special approval requests. The Zoning Administrator shall provide notice of the special approval request and public hearing as required by the City or Village Zoning, Act 207 of 1921 as amended (MCL 125.584a).
- C. The Planning Commission may deny, approve, or approve with conditions, requests for special land use approval.
- D. The Zoning Administrator shall have the right to inspect any special approval use, to ensure continued compliance with the conditions of the special approval.

### **Section 7.3 Supplemental Site Development Standards**

Those permitted uses and uses allowed by Special Approval enumerated in any zoning district, if included below, shall be subject to the following conditions and requirements:

- A. Campgrounds  
A minimum lot size shall be five (5) acres. The lot shall provide direct vehicular access to a public street or road. The term "lot" shall mean the entire campground or travel trailer park. Each lot shall be provided with at least one (1) public phone.
- B. Car Wash Facilities
  - 1. Vacuuming activities may be carried out in the rear yard and at least fifty (50) feet distance from any adjoining residential use. In lieu of providing this requirement, a five (5) foot masonry wall may be erected in a manner that will shield residential uses from undue noise pollution due to said vacuuming activities.
  - 2. The entrances and exits of the facility shall be from within the lot and not directly to or from adjoining street or alley. A street or alley shall not be used as maneuvering or parking spaces for vehicles to be serviced by the subject facility.

C. Drive-Thru Restaurants

1. The main and accessory buildings shall be set back a minimum of forty (40) feet from any adjacent right-of-way line or residential property line.
2. There shall be provided, on the sides abutting or adjacent to a residential district or use, a six (6) feet completely obscuring wall, fence or landscape screen, measured from the surface of the ground on the abutting residential district or use.

D. Gas and Oil Processing Facilities

1. The facility shall comply with all federal, state and local building, environmental and health codes and regulations.
2. The applicant shall provide copies of the application for permit to drill, permit to drill, survey record of well location, and plat, as provided to the Supervisor of Wells, Department of Natural Resources, as part of the permit process for the location and erection of oil and gas processing facilities.
3. The Planning Commission may impose reasonable conditions in order to secure compliance with the applicable zoning standards.
4. The facility may incorporate surface land owned or leased by the oil and/or gas company. If leased, the lease documents shall be submitted to the Planning Commission, and the Village Council shall be informed of the length of the lease.
5. Because the subject facilities are industrial in nature, the required site plan shall also show adequate visual and sound privacy from adjacent property and public roads. Forested greenbelt, berms, attractive fence screen, landscaping, mufflers, insulation, or other contrivances may be used to insure compliance with visual and sound privacy of the adjacent properties.
6. In the event the facility is no longer required or is not used for two (2) years, the existing facility shall be removed and the area restored to its original state. Further, the area shall be checked by an agency concerned with environmental protection to insure it is clear of pollutants.
7. The sound level of the facility shall not exceed sixty (60) decibels as measured four hundred and fifty (450) feet in any direction from the facility.
8. The facility shall be built no closer than four hundred and fifty (450) feet from an existing dwelling.
9. The facility shall be built no closer than one hundred (100) feet from any public road.

E. Gasoline / Service Station

1. Minimum lot size shall be fifteen thousand (15,000) square feet for a Service station or repair garage and twelve thousand (12,000) square feet for a filling station.
2. Minimum lot width shall be one hundred twenty (120) feet for a service station or repair garage and one hundred (100) feet for a filling station.
3. An automobile service station building, repair garage or main building for a filling station shall be located not less than forty (40) feet from the street right-of-way or less than twenty-five (25) feet from the side or rear lot line of any adjoining residential property or less than ten (10) feet from the side or rear lot line of adjoining commercial or industrial property.

4. No ingress or egress to an automobile service station, public garage or filling station, shall be closer than twenty-five (25) feet from any intersection or residential property line abutting the property on which such facility is located.
5. The entire lot, excluding those areas occupied by a building or landscaped areas, shall be hard-surfaced with concrete or a plant mixed bituminous material.
6. All lubrication equipment, hydraulic hoists and pits shall be completely enclosed within a building. All gasoline pumps shall be located not less than twenty-five (25) feet from any lot line and shall be arranged so that motor vehicles may be provided easy egress and ingress to and from the adjoining street, and so that no portion of the vehicle while it is stopped for service, shall overhang onto a sidewalk, curb, street or public right-of-way.
7. When adjoining residential property, a masonry wall shall be constructed parallel to the property line of such residential property as required in **Section 4.12 Fences, Walls and Hedges**. All masonry walls shall be protected by a fixed curb or other barrier to prevent vehicular contact.
8. All outside storage areas for trash, used tires, auto parts and similar items shall be enclosed by a masonry wall of at least five (5) foot high (**Section 4.12 Fences, Walls and Hedges**). Outside storage or parking of disabled, wrecked or partially dismantled vehicles shall be allowed for a period not to exceed fifteen (15) days.
9. The sale or rental of used or new vehicles, including trailers or recreational vehicles on the premises, is prohibited.
10. The property on which the automobile service station, repair garage or filling station is located shall be no closer than five hundred (500) feet from a vehicular entrance or exit to a hospital, library, museum, public or private school, playground, church or park.
11. All exterior lighting, including signs, shall be hooded or shielded so that glare shall be shielded from the view of adjacent properties.
12. On a corner lot, both street frontage sides shall conform to all applicable front yard regulations of this ordinance.

F. Kennels or Veterinary hospital

1. All kennels or veterinary hospitals shall be operated in conformance with County and State regulations.
2. Animals shall be confined in a fenced area to preclude their approaching nearer than one hundred (100) feet to any dwelling on adjacent premises or nearer than fifty (50) feet from the property line, which ever is greater.
3. The facility shall be so constructed and maintained that odor, dust, noise or drainage shall not constitute a nuisance or hazard to adjoining premises.
4. All principal use activities shall be included within an enclosed main building.

G. Manufactured Home Parks

Manufactured Home Parks may be permitted in the Mixed Residential District, R-4, after a hearing by the Planning Commission, provided the following conditions are satisfied:

1. Manufactured home parks for the location of two (2) or more manufactured homes shall be developed pursuant to the requirements of The Mobile Home Commission Act, Public Act 96 of the State of Michigan, 1987.
2. No land shall hereafter be utilized for the erection, construction, operation and/or maintenance of a residential manufactured home, mobile home or trailer coach



park as defined by the laws of the State of Michigan, except upon application for a permit from the Village signed by the owner and legal title holder of the property sought to be used for such purposes.

3. The occupancy load of any manufactured housing unit shall be limited to provide no less than three hundred (300) cubic feet of air space per occupant exclusive of the cubic air space of toilet rooms or closets.
4. The land parcel being proposed for the manufactured housing park shall be of such land areas as to provide for a minimum of at least twenty (20) manufactured housing sites and shall not exceed a maximum of one hundred (100) manufactured housing sites.
5. Manufactured housing sites shall contain a minimum area of at least four thousand (4,000) square feet. All such manufactured housing site areas shall be computed exclusive of service drives, facilities and recreation space.
6. All manufactured housing parks shall have access to major or secondary thoroughfares within the Village by directly abutting thereon. Frontage on said thoroughfares shall be equal to at least two hundred (200) feet in width.
7. An obscuring wall, fence or landscape screen six (6) feet in height shall be provided on all sides of the manufactured housing park, with the exception of that portion providing ingress and egress to the site.
8. Fences when provided around manufactured housing lots shall be uniform in height and shall not exceed thirty (30) inches in height and shall be constructed in such a manner as to provide firefighter access to all sides of each manufactured housing site.
9. Recreation space and landscaping as follows:
  - a. There shall be provided an area of not less than one hundred (100) square feet for recreation, for each manufactured housing site in the park, with a minimum area of not less than five thousand (5,000) square feet, which shall be not longer than two (2) times its width. Such area shall be developed and maintained by the management so as to provide healthful recreation for children housed in the manufactured housing park.
  - b. The front yard and the side yard adjacent to a street shall be landscaped and the entire manufactured housing park shall be maintained in clean, presentable condition at all times.

#### H. Outdoor Sales Facilities

1. Lighting should be installed in such a manner which will not create a traffic hazard on abutting streets or which will cause a glare or direct illumination to be cast onto adjacent properties.
2. Parking area shall be provided on-site so as to prevent on-street parking.

#### I. Sexually Oriented Business

1. No sexually oriented business shall be permitted in a location in which any principal or accessory structure, including signs, is within five hundred (500) feet of any principal or accessory structure of another sexually oriented business.
2. No sexually oriented business shall be established on a parcel which is within five hundred (500) feet of any parcel zoned R-1, R-2, R-3, or R-4.

3. No sexually oriented business shall be established on a parcel within five hundred (500) feet of any residence, park, school, child care organization, or place of worship, or other sexually oriented business shall be measured shall measured in a straight line from the nearest property line upon which the proposed sexually oriented business is to be located to the nearest property line of the residence, school, child care organization, place of worship, or other sexually oriented business.
4. The proposed use shall conform to all specific density and setback regulations, etc. of the zoning district in which it is located.
5. The proposed use must meet all applicable written and duly promulgated standards of the Village of Ellsworth and other governments or governmental agencies having jurisdiction, and that to the extent required, the approval of these governments and/or governmental agencies has been obtained or is reasonably assured.
6. The outdoor storage of garbage and refuse shall be contained, screened from view and located so as not be visible from neighboring properties or adjacent roadways.
7. Any sign or signs proposed for the sexually oriented business must comply with the provisions of this Ordinance, and shall not otherwise include photographs, silhouettes, drawings, or pictorial representations of any type, or include animated or flashing illumination.
8. Entrances to the proposed sexually oriented business must be posted on both the exterior and interior walls, in a location clearly visible to those entering and exiting the business, and using lettering no less than two (2) inches in height that: 1) "Persons under the age of 18 are not permitted to enter the premises", and 2) "No alcoholic beverages of any type are permitted within the premises unless specifically allowed pursuant to a license duly issued by the Michigan Liquor Control Commission."
9. No product or service for sale or gift, or any picture or other representation of any product or service for sale or gift, shall be displayed so as to be visible from the nearest adjoining roadway or a neighboring property.
10. Hours of operation shall be limited to 8:00 AM to 12:00 AM.
11. All off-street parking areas shall be illuminated during all hours of operation of the sexually oriented business, and until one hour after the business closes.
12. Any booth, room or cubicle available in any sexually oriented business, excepting an adult motel, used by patrons for the viewing of any entertainment characterized by the showing of Specified Anatomical Areas or Specified Sexual Activities
  - a. Is handicap accessible to the extend required by the Americans With Disabilities Act;
  - b. Is unobstructed by any door, lock or other entrance and exit control device;
  - c. Has at least one side totally open to a public, lighted aisle so that there is an unobstructed view at all times from the adjoining aisle of any occupant;
  - d. Is illuminated by a light bulb of wattage of no less than 25 watts;
  - e. Has no holes or openings in any side or rear wall

J. Soil, Clay, Sand, Gravel or Similar Material - Removal or Filling

1. From and after the effective date of this Ordinance, it shall be unlawful for any person, firm, corporation, partnership, or any other organization or entity to strip any topsoil, sand, clay and gravel or similar material, or to use lands for filling within the area of the Village without first submitting a site plan and procuring approval from the Planning Commission.
2. A separate site plan approval will not be required for excavation or fill activities associated with building construction pursuant to a duly issued building permit. However, where sand, gravel, topsoil, or other substances are removed from the site where found and taken to another site, site plan approval is needed for the receiving site.
3. Site plan application. A separate site plan shall be required for each separate excavation or fill site. In addition to the site plan requirements listed in **Section 7.1 (B) Site Plan Review (All Districts) - Site Plan Data Required**, a site plan prepared under this section shall also include:
  - a. Name and addresses of parties interested in said premises setting forth their legal interest in said premises.
  - b. Full legal description of the premises where operations are proposed.
  - c. Detailed proposal as to method of operation, what type of machinery or equipment will be used, and estimated period of time that such operation will cover.
  - d. Detailed statement as to exactly what type of material is proposed to be extracted or deposited.
  - e. Proposed method of filling excavation and/or other means to be used to allow for the reclamation of lands to a usable purpose.
  - f. Such other information as may be reasonable required by the Planning Commission to base an opinion as to whether the site plan should be approved or not.

K. Transmission and Communication Towers (Commercial), Public Utility Microwaves and Public Utility T.V. Transmitting Towers

1. Application: The applicant must demonstrate that no existing tower, alternative tower structure or alternative technology not requiring the use of towers or alternative tower structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Planning Commission related to the availability of suitable existing towers, other alternative towers or alternative technology. Evidence submitted to demonstrate that no existing tower, alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
  - a. No existing towers or alternative structures are located within the geographic area which meets the applicant's engineering requirements
  - b. Existing towers or alternative tower structures are not of sufficient height to meet applicant's engineering requirements.
  - c. Existing towers or alternative tower structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
  - d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or alternative tower structures, or the antenna on the existing towers or alternative tower structures would cause interference with the applicant's proposed antenna.
  - e. The fees, costs or contractual provisions required by the owner in order to share an existing tower or alternative tower structure or to adapt an existing

- tower or alternative tower structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- f. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
  - g. The applicant demonstrates that an alternative technology that does not require the use of towers or alternative tower structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.
2. **Setbacks:** The following setback requirements shall apply to all towers for which a special use permit is required; provided, however, that the planning Commission may reduce the standard setback requirements if the goals of this ordinance would be better served thereby:
    - a. Towers must be setback a distance equal to at least seventy-five (75) percent of the height of the tower from any adjoining lot line.
    - b. Guys and accessory buildings must satisfy the minimum zoning district setback requirements.
  3. **Security Fencing:** Towers and attendant accessory structures shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the Planning Commission may waive any such requirements, as it deems appropriate.
  4. **Landscaping:** The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however that the Planning may waive any such requirements if the goals of this ordinance would be better served thereby.
    - a. Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.
    - b. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.
    - c. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.
  5. **State or Federal Requirements:** All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower and antenna at the owner's expense.
  6. **Aesthetics:** Towers and antennas shall meet the following requirements:

- a. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
  - b. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
  - c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
  - d. Where a feasible alternative exists, towers, alternative tower structures and supporting structures shall not utilize a power source which generates noise able to be heard by a person of normal aural acuity at adjoining property lines or public property; however this section shall not be construed as limiting the use of temporary generators, or similar devices used to create power during periods of interruption of the primary power source.
7. Lighting: Towers shall not be artificially lighted unless required by the FAA or other applicable authority. If lighting is required, the lighting alternative and design chosen must cause the least disturbance to the surrounding views.
8. Compliance with Codes: Antenna and metal towers shall be grounded for protection against a direct strike by lightning and shall comply as to electrical connections and wiring and as to structural integrity with all applicable state and local building codes and the applicable standards for towers published by the Electronic Industries Association, as amended from time to time.
9. Interference with Residential Reception: Towers shall be located so that they do not interfere with television and radio reception to neighboring residential areas.
10. Signs: No signs other than signs required pursuant to federal, state, or local law or ordinance shall be allowed on an antenna or tower.
11. Spacing-Towers: Towers shall be located no closer than one (1) mile from an existing telecommunication or alternative tower structure, as measured in a straight line between the base of the existing tower and proposed base of the proposed tower.
12. Spacing-Residences: A tower shall not be located within two hundred (200) feet or three hundred (300) percent of the height of the tower, whichever is greater, of a single family or multiple family dwelling unit, church, school, or other structure normally used and actually used for the congregation of persons. Distance for the purpose of this section shall be measured from the base of the tower structure to the lot line of the single family or multiple family unit, church, school or other structure normally used and actually used for the congregation of persons.
13. Removal of Abandoned Antennas and Towers: Any antenna or tower that is not operated for a continuous period of nine (9) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety days of receipt of notice from the Village notifying the owner of such abandonment. Along with removal, the owner shall restore the site of the antenna or tower to its original condition prior to location of the antenna or tower

and antenna at the owner's expense. If there are two or more users of a single tower, than this provision shall not be effective until all users cease using the tower. The Planning Commission may require the applicant to file a bond equal to the reasonable cost of removing the tower, antenna, alternative tower structure or other supporting structure(s) as a condition of a special use permit given pursuant to this section.

#### **Section 7.4 Off-Street Parking, Loading and Unloading Requirements and Standards**

Off-street parking space with adequate access to all spaces shall be provided and maintained in all zoning districts at the time of erection or alteration of any main building, that is adequate for parking, loading and unloading of vehicles according to the requirements listed below, and including at least the minimum number of spaces required by the table in **Section 7.4.2 Minimum Number of Parking Spaces per Unit**.

##### **Section 7.4.1 Parking Requirements**

- A. Parking for other than residential use shall be either on the same lot or within three hundred (300) feet of the building it is intended to serve, measured from the nearest point of the building to the nearest point of the off-street parking lot.
- B. Residential off-street parking space shall consist of a parking strip, driveway, garage or any combination located on the premises they are intended to serve. In a residential district, a commercial vehicle may be parked or stored provided it does not exceed one (1) ton in capacity and is owned by someone residing on the premises.
- C. Adequate space should be provided in all parking areas to facilitate turning around of vehicles so that the entry on to village streets and county roads may be in a forward manner and not by backing. Furthermore, in parking areas where internal movement of vehicles is necessary, adequate aisle space shall be provided to insure vehicular and pedestrian safety.
- D. A minimum of one hundred sixty-two (162) square feet shall comprise one (1) vehicular parking space or nine (9) feet by eighteen (18) feet.
- E. Computation of floor area of buildings shall be exclusive of basements, cellars or attics where these areas are used for storage or utilities; calculated using the outside perimeter of building. In the case of a single story structure, the floor area may be reduced by ten (10) percent to accommodate storage or utilities.
- F. The Village Planning Commission shall determine the required parking space not specified in **Section 7.4.2 Minimum Number of Parking Spaces per Unit**.
- G. Adequate area must be provided for snow piling. Handicap parking must be provided as required by State and Federal regulations. Designation of parking area must be clearly identifiable for use by the public.

#### Section 7.4.2 Minimum Number of Parking Spaces per Unit

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|----|--|--|
| A. | Banks, business offices, studios and professional offices of architects, lawyers, and similar professions. | Three (3); plus one (1) additional space for each three hundred (300) square feet of floor area.   |
| B. | Barber shops and beauty parlors.   | Two (2) for each operator chair; plus one (1) for each two (2) employees.  |
| C. | Bowling establishments.  | Five (5) spaces for each bowling lane.   |
| D. | Churches, theaters and auditoriums except schools.   | One (1) for each four (4) seats; plus one (1) for each two (2) employees.  |
| E. | Community center, library, museum or art center.   | One (1) space for each two hundred (200) square feet of floor area.  |
| F. | Dwellings.   | Two (2) for each dwelling unit.  |
| G. | Hospitals, clinics and similar establishments.   | One (1) for each bed and/or examining room; plus one (1) for each two (2) employees on maximum working shift; plus one (1) for each two hundred (200) square feet of floor area. |
| H. | Laundromats.   | One (1) for each two (2) washing machines and/or dry cleaning machines.  |
| I. | Hotels, motels, tourist homes and lodging house.   | One (1) for each sleeping room; plus one (1) for each two (2) employees on the maximum working shift.  |
| J. | Manufacturing or industrial establishments, warehouse similar establishment.                               | Two (2) for each two (2) employees on maximum working shift; plus space to accommodate all vehicles used in connection with the operations of the establishment.                 |
| K. | Plumbing, printing and similar service shops and businesses.   | One (1) for each employee; plus one (1) for each three hundred (300) square feet of floor area   |

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|----|--|--|--|
| L. | Private clubs, night club, dance halls and similar recreational establishments.                              | One (1) for each one hundred (100) square feet of floor area.  |  |
| M. | Professional offices of doctors, dentists and similar professions.   | One (1) for each one hundred (100) square feet of floor area or a minimum of four (4) spaces, whichever is greater.                        |  |
| N. | Restaurants, and similar establishments for sale and service of food and drink, except liquor and drive-ins. | One (1) for each one hundred (100) square feet of floor space.   |  |
| O. | Retail stores.   | One (1) for each one hundred fifty (150) square feet of floor area.  |  |
| P. | High schools.  | One (1) for each six (6) seats in main auditorium or one (1) for each employee; plus one (1) for each four (4) students, wh                |  |
| Q. | Schools (except high schools).   | One (1) for each ten (10) seats in main assembly room, or one (1) for each employee plus two (2) for each classroom, whichever is greater. |  |
| R. | Home occupations.  | Two (2) spaces for dwelling use; plus additional spaces as determined by Planning Commission to accommodate customers or clients.          |  |
| S. | Auto repair and service stations.  | Two (2) spaces for each service bay; plus one (1) space for each employee on maximum working shift.  |  |
| T. | Bed and breakfast establishments.  | Two (2) spaces for the operator; plus one (1) for each guest room; plus one (1) space for each non-resident employee.                      |  |

### **Section 7.4.3 Loading and Unloading Space**

Every building or structure engaged in loading and unloading goods shall provide space on the premises in addition to that required for parking, for the loading, unloading and standing of all vehicles to avoid undue interference with public use of the highway.

### **Section 7.5 Review Procedure for Sexually Oriented Businesses**

The Planning Commission shall adhere to the following procedures when reviewing a special approval application for a sexually oriented business.



- A. If the Planning Commission determines that a special approval application for a sexually oriented business is not complete when it is first presented to the Planning Commission, it shall provide written notice by first class mail within three (3) business days of said determination detailing the items required to complete the application. Upon payment of a new filing fee, the applicant may resubmit the amended application for review by the Planning Commission for completeness.
- B. If the Planning Commission determines that the application is complete, it shall within sixty (60) days of said determination make and adopt specific findings with respect to whether the proposed sexually oriented business is in compliance with the standards designated in Sections 7.2.1 and 7.3 (I). If the Planning Commission has not made and adopted findings of fact with respect to a proposed sexually oriented business and either approved or denied the issuance of a special approval for the same within sixty (60) days of its determination that a completed application has been filed, then the special approval shall be deemed to have been approved.
- C. Prompt judicial review of adverse determination: If the Planning Commission denies a special approval application for a sexually oriented business pursuant to the above paragraphs, then the applicant shall be entitled to prompt judicial review by submitting a written request to the Zoning Administrator. The Village shall within three (3) business days of the receipt of such written notice do the following:
1. File a petition in the Circuit Court for the County of Antrim seeking a judicial determination with respect to the validity of such denial and, in conjunction therewith, apply for a preliminary and permanent injunction restraining the applicant from operating the sexually oriented business in violation of the Village Zoning Ordinance;
  2. Request that the application for issuance of a preliminary injunction be set for a show-cause hearing within five (5) business days or as soon thereafter as is possible after the filing of such petition. In the event the applicant appears at or before the time of such show-cause hearing, waives the notice otherwise provided by Michigan Court Rules, and requests that at the time set for such hearing the Court proceed to hear the case under applicable rules of civil procedure for the issuance of such permanent injunction on its merits, the Village shall be required to waive its application for preliminary injunction and shall join in such request. In the event that the applicant does not waive notice and/or does not request any early hearing on the Village's application for permanent injunction, it shall never the less be the duty of the Village to seek the earliest possible hearing date under Michigan Law and the Michigan Court Rules.  
The filing of written notice of intent to contest the Planning Commission's denial of a special approval shall not in any way affect the validity of such denial, but such denial shall be deemed invalid and the special approval application automatically approved if, within fifteen (15) business days of the filing of the Village's petition, a show-cause hearing has not been scheduled.



## **ARTICLE VIII: ADMINISTRATION AND ENFORCEMENT**

### **Section 8.1 Administrative Offices**

The provisions of the ordinance shall be administered and enforced by a Village Zoning Administrator and/or deputy of same, designated and appointed by the Village Council. Said Zoning Administrator and/or deputy shall be compensated, subject to conditions and rate of pay as determined by the Village Council. The Zoning Administrator shall, among other duties, issue all permits and notices of violations provided for in this ordinance.

### **Section 8.2 Zoning Permits**

A zoning permit shall be required to secure the designated building permit and must be presented at the time of application for said building permit. No structure within the limits of the Village of Ellsworth shall hereafter be erected, moved, enlarged, altered, or razed nor shall any work be started on such structures until a zoning permit shall have been obtained from the Zoning Administrator. No permit shall be issued to erect a building or structure or make any changes of use unless they are in conformity with the provisions of this Ordinance and amendments duly enacted after the effective date of this Ordinance. Unless construction is started within one (1) year from the date of issuance, the zoning permit shall be void.

The demolition of any structure with a ground floor area of four hundred (400) square feet or more shall require a zoning permit to be issued by the Village Zoning Administrator.

The erection of any structure larger than one hundred (100) square feet in floor area shall require a zoning permit to be issued by the Village Zoning Administrator.

### **Section 8.3 Application Requirements**

There shall be submitted with all applications for zoning permits two (2) copies of a site layout or plot plan drawn to scale showing: 1) the location, shape, area and dimensions of the lot, 2) the location, dimensions, height, and bulk of the existing and/or proposed structures, to be erected, or moved on the lot, 3) the intended uses, 4) the proposed number of dwelling units or the primary uses of the proposed facilities, 5) the yard, open space, and parking space dimensions, 6) any other information deemed necessary by the zoning administrator to determine and provide for the enforcement of this Ordinance.

### **Section 8.4 Fees**

Fees for the inspection and issuance of zoning permits required under this Ordinance shall be collected by the Zoning Administrator in advance of issuance. Fee schedules will be determined by the Village Council and will cover the costs of administration of

the Ordinance.

## **Section 8.5 Enforcement**

### **Section 8.5.1 Nuisance per se**

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

### **Section 8.5.2 Inspection**

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

### **Section 8.5.3 Penalties**

- A. Any person, partnership, limited liability company, corporation, or association who creates or maintains a nuisance per se or who violates or fails to comply with any provision of this Ordinance or any permit issued pursuant to this Ordinance shall be responsible for a municipal civil infraction. Every day that such violation continues shall constitute a separate and distinct offense under the provisions of this Ordinance. Nothing in this section shall exempt the offender from compliance with provisions of this Ordinance.
- B. The Village Zoning Administrator is hereby designated as the authorized Village official to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.
- C. In addition to enforcing this Ordinance as a municipal civil infraction, the Village may initiate proceedings in the Circuit Court to abate or eliminate the nuisance per se or any other violation of this Ordinance.

## **Section 8.6 Conflicting Regulations**

In the interpretation of this Ordinance, this Ordinance shall rule unless there exists a conflict with a regulation, deed restriction or private covenant which is more stringent, in which case the more stringent regulations will rule.

## **ARTICLE IX: ZONING BOARD OF APPEALS**

### **Section 9.1 Creation and Membership**

The Ellsworth Village Council has elected to serve as the Village Zoning Board of Appeals (ZBA) in accordance with Act 207 of the Public Acts of Michigan of 1921, as amended, (MCL 125.585). The Village Council as the Zoning Board of Appeals shall perform its duties and exercise its powers as provided by Section 5 of the Act, as amended, and in such a way that the objectives of this Ordinance may be achieved; that there shall be provided a means for competent interpretation and controlled flexibility in the application of this Ordinance; that the health, safety, and welfare of the public be secured.

The Village Council may appoint up to two (2) alternate members for three (3) year terms. An alternate member may be call on a rotating basis, to sit as a regular member of the ZBA in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular voting member of the board of appeals.

### **Section 9.2 Organization and Procedures**

#### **Section 9.2.1 Rules or Procedures**

The Village Council shall adopt its own rules or procedures as may be necessary to conduct its meeting and carry out its function as a board of appeals. The Board shall choose its own chairperson, and in his/her absence, an acting chairperson.

#### **Section 9.2.2 Meetings**

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

#### **Section 9.2.3 Minutes**

Minutes shall be recorded of all proceedings which shall contain evidence and data relevant to every case considered, together with the votes of the members and the final disposition of each case. Such minutes shall be filed in the office of the Village Clerk and shall be made available to the general public. The Village Clerk shall act as Secretary

to the Board of Appeals, and all records of the Board's action shall be taken and recorded under the Clerk's direction.

#### **Section 9.2.4 Hearings**

The Board of Appeals shall fix a reasonable time for the hearing of the appeal and give due notice, prior to the hearing, to all real property owners and to the occupants of single and two-family dwellings within three hundred (300) feet of the premises. Such notice is to be delivered personally or by mail addressed to the respective owners at the address given in the last assessment roll. Upon the hearing, any party may appear in person or by agent or by attorney.

#### **Section 9.2.5 Decisions**

The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed and shall make such order, requirement, decision or determination as in its opinion ought to be made and shall have all powers of the officer from whom the appeal is taken. The Board of Appeals shall return a decision on a case within a reasonable time.

#### **Section 9.2.6 Majority Vote**

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

### **Section 9.3 Appeals**

#### **Section 9.3.1 Filing of Appeals**

Appeals to the Board of Appeals may be made by any person aggrieved, or by any officer, department, or board of the Village. An appeal concerning the administration of the provisions of this Ordinance may be made to the Board of Appeals within a time prescribed by the Board of Appeals by general rule. Such appeal shall be filed with the secretary of the Board of Appeals or with the Zoning Administrator, and shall specify the reasons for the appeal. The Zoning Administrator shall immediately transmit to the Secretary of the Board all papers constituting the record upon which the action appealed from was taken.

### **Section 9.3.2 Stay**

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Appeals, after notice, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board of Appeals or, on application, by court of record.

### **Section 9.3.3 Fees**

A fee as established by the Village Council shall be paid to the Secretary of the Board of Appeals at the time of filing application with the Board. The purpose of such fee is to cover, in part, the necessary advertisements, investigations, and other expenses incurred by the Board in connection with the appeal.

### **Section 9.4 Duties and Powers**

The Village Board of Appeals shall not have the power to alter or change the Zoning District classification of any property, nor to make any change in the terms or intent of this Ordinance, but does have power to act on those matters where this Ordinance provides for an administrative review, interpretation or variance. The Board of Appeals also has the authority to interpret district boundaries on the Zoning Map.

#### **Section 9.4.1 Review**

The Board shall hear and decide appeals where it is alleged by the person objecting that there is an error in any order, requirement, permit, decision or refusal made by the Zoning Administrator or by any other official in administering or enforcing any provisions of this Ordinance.

#### **Section 9.4.2 Interpretation**

The Board shall have the power to:

- A. Interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of the Ordinance.
- B. Determine the precise location of the boundary lines between the Zoning Districts.
- C. Classify a use which is not specifically mentioned as part of the use regulations of any Zoning District so that it conforms to a comparable permitted or prohibited use, in accordance with the purposes and intent of each district.
- D. Establish site specific off-street parking and loading space requirements when it is determined that an amount above the minimum as established in this Ordinance will be necessary.

### Section 9.4.3 Variances

The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, PROVIDED ALL of the BASIC conditions listed herein and any ONE (1) of the SPECIAL conditions listed thereafter can be satisfied.

- A. Basic Conditions: Any variance granted from this Ordinance:
1. Will not be contrary to the public interest or to the intent and purpose of this ordinance.
  2. Will not cause a substantial adverse effect upon property values in the immediate vicinity, in the district in which the property of the applicant is located or in similar districts throughout the village.
  3. Is not one where the specific conditions relating the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.
  4. Will relate only to property that is under control of the applicant.
- B. Special Conditions: When ALL of the foregoing basic conditions can be satisfied, a variance may be granted when any ONE (1) of the following special conditions can be clearly demonstrated:
1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this ordinance. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of the particular parcel of land.
  2. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same Zoning District. Such circumstances or conditions shall not have resulted from any act of the applicant after the adoption of this ordinance.
  3. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same Zoning District.
- C. Rules: The following rules shall be applied in the granting of variances:
1. The Board may specify, in writing, such conditions regarding the character, location, and other features that will in its judgement, secure the objectives and purposes of this ordinance. The breach of any such condition shall automatically invalidate the permit granted.
  2. Each Variance granted under the provisions of this ordinance shall become null and void unless: The construction authorized by such variance or permit has been commenced within six (6) months after the granting of the variance. The occupancy of land, premises, or buildings authorized by the variance has taken place within two (2) years, after the granting of the variance.



3. No application for a variance which has been denied wholly or in part by the Board shall be resubmitted for a period of one (1) year from the date of the last denial, except on grounds, or newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid.

## **ARTICLE X: AMENDMENTS, SEVERANCE AND ENACTMENT**

### **Section 10.1 Interpretation**

The interpretation and application of the provisions of this Ordinance shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety, conform, convenience and general welfare. It is not intended by this Ordinance to repeal, abrogate, annul or in any way to impair or interfere with any existing provisions of law or ordinance, or with any rules, regulation, or permits previously adopted or issued or which shall be adopted or issued pursuant to the law relating to the use of buildings or premise, providing, however, that where this Ordinance imposes a greater restriction than is required by existing ordinances or rules, regulations or permits, the provisions of this Ordinance shall take precedence. Nothing in this Ordinance should be interpreted or construed to give rise to any permanent vested rights in the continuation of any particular use, district, zoning classification or any permissible activities therein; and they are hereby declared to be subject to subsequent amendment, change or modification as may be necessary to the preservation or protection of the public's health, safety and welfare.

### **Section 10.2 Severability**

This Ordinance and the various parts, sections, subsections, phrases and clauses thereof are hereby declared to be severable. In any part, article, section, sentence, phrase or clause adjudged unconstitutional or invalid, it is hereby provided that the remainder of the Ordinance shall not be affected thereby.

### **Section 10.3 Amendment to this Ordinance**

The Village Council is authorized and empowered to cause this Ordinance to be amended, supplemented, or changed, pursuant to the authority and according to the procedures set forth in Act 207 of the Public Act of 1921, as amended.

### **Section 10.4 Rights and Remedies**

The rights and remedies provided herein are cumulative and in addition to any other remedies provided by law.

### **Section 10.5 General Responsibilities**

The Village Council or its duly authorized representative is hereby charged with the duty of enforcing this Ordinance and said Council is hereby empowered to begin and pursue any and all necessary and appropriate actions and/or proceedings in the Circuit Court or any other court having jurisdiction to restrain and/or prevent any non-compliance with, or violation of, any of the provisions of this Ordinance, and to correct, remedy and/or abate such non-compliance or violation. It is further provided that any

person aggrieved or adversely affected by such a non-compliance or violation may institute suit and/or join the Village Council in such a suit to abate the same.

### **Section 10.6 Enactment and Effective Date**

The foregoing Zoning Ordinance and Zoning Map were presented at public hearings on November 7, 1996 and December 3, 1996 and was adopted at a meeting of the Village of Ellsworth Council on January 13, 1997 after approval of the same by the Village of Ellsworth Planning Commission on December 19, 1996. The Zoning Ordinance **effective date** is 30 days after Council adoption, **February 12, 1997**.

### Section 6.8 Schedule of Regulations

Zoning District	District Name	Minimum Lot Area		Maximum Height of Structure		Minimum Yard Setbacks			Min. Dwelling Unit Width	Max % of Lot Coverage
		Area s.f.	Width	Stories	Feet	Front	Side	Rear		
R-1	Low Density Residential	32,000	100'	2	30'	30' (a)	20' (b)	20'	24'	20%
R-2	General Residential	15,000	80'	2	30'	25' (a)	10' (b)	15'	24'	30%
R-3	Village Residential	12,000	60'	3	35'	25' (a)	10' (b)	10'	20'	35%
R-4	Mixed Residential	15,000 (c)	100'	3	35'	25' (a)	10' (b)	15'	14'	35%
C-1	Village Commercial	-----	-----	3	35'	-----	----- (d)	----- (e)	NA	-----
C-2	General Commercial	12,000	100	2	30'	35'	20'	20'	NA	-----
PUD	Planned Unit Development	See Article VI, Section 6.7								

VILLAGE OF ELLSWORTH  
ZONING MAP



SOURCES:  
PARCEL INFORMATION/ATRIMCO, EQUALIZATION  
MAP PRODUCTION/ARYN HEIDEMANN, ASSOCIATES

ZONING DISTRICTS

- R-1 LOW DENSITY RESIDENTIAL DISTRICT
- R-2 GENERAL RESIDENTIAL DISTRICT
- R-3 VILLAGE RESIDENTIAL DISTRICT
- R-4 MED RESIDENTIAL DISTRICT
- C-1 VILLAGE COMMERCIAL DISTRICT
- C-2 GENERAL COMMERCIAL DISTRICT
- PUD PLANNED UNIT DEVELOPMENT DISTRICT

DRAFT

12/20/96

